S. HRG. 99-375

# INTERGOVERNMENTAL REGULATORY RELIEF ACT OF 1985

## HEARINGS

BEFORE THE

SUBCOMMITTEE ON
INTERGOVERNMENTAL RELATIONS

OF THE

## COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

**S. 483**

INTERGOVERNMENTAL REGULATORY RELIEF ACT OF 1985

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APRIL 2 AND MAY 14, 1985

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# CONTENTS


Page

Opening statement of Senator Durenberger ..... 1, 89

WITNESSES

TUESDAY, APRIL 2, 1985

John Shannon, Executive Director, Advisory Commission on Intergovernmental Relations, accompanied by Larry Hunter, Research Director, ACIR ..... 2
James Blum, Assistant Director, Budget Analysis Division, Congressional Budget Office ..... 8
James B. McNulty, mayor, Scranton, PA, representing the U.S. Conference of Mayors; Wilce Cooke, mayor, Benton Harbor, MI, representing the National League of Cities; and Paul Violette, majority floor leader, Maine State Senate, representing the National Conference of State Legislatures ..... 24

TUESDAY, MAY 14, 1985

John Shannon, Executive Director, Advisory Commission on Intergovernmental Affairs, accompanied by Bruce McDowell; Adam Rose, professor of economics, West Virginia University; and Michael Fix and Thomas Muller, The Urban Institute ..... 93
Wallace Chan, deputy controller, State of California, on behalf of Ken Cory, controller, State of California; John Finnegan, auditor, Commonwealth of Massachusetts; and Ken Payne, director, Rhode Island League of Cities and Towns, on behalf of the National League of Cities ..... 129

ALPHABETICAL LIST OF WITNESSES

Blum, James:
- Testimony ..... 8
- Prepared statement ..... 11

Chan, Wallace:
- Testimony ..... 129
- Prepared statement of Kenneth Cory ..... 139
- Responses to written questions ..... 152

Cooke, Wilce:
- Testimony ..... 24
- Prepared statement with an attachment ..... 41

Finnegan, John:
- Testimony ..... 129
- Prepared statement ..... 156
- Responses to written questions ..... 160

Fix, Michael:
- Testimony ..... 93
- Prepared statement ..... 119

Hunter, Larry: Testimony ..... 2
McDowell, Bruce: Testimony ..... 93
McNulty, James B.:
- Testimony ..... 24
- Prepared statement ..... 38

Muller, Thomas:
- Testimony ..... 93
- Prepared statement ..... 119

Page

Payne, Kenneth F.:
Testimony ..... 129
Prepared statement ..... 164
Rose, Adam:
Testimony ..... 93
Prepared statement ..... 102
Shannon, John:
Testimony ..... 2, 93
Prepared statement ..... 6
Violette, Paul:
Testimony ..... 24
Prepared statement with an attachment ..... 84

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Hon. Pete Wilson, U.S. Senator from the State of California ..... 90
Text of S. 483 ..... 175
Letters to Senator Durenberger from:
Office of Management and Budget, Executive Office of the President ..... 195
Board of Supervisors, county of Los Angeles ..... 198
National Association of Counties ..... 200
National League of Cities ..... 204
Statement of the Michigan Municipal League ..... 205
"Federal and State Mandating: A First Look at the Mandate Terrain," by Max Neiman and Catherine Lovell, from Administration & Society, November 1982 ..... 223

# INTERGOVERNMENTAL REGULATORY RELIEF ACT OF 1985

TUESDAY, APRIL 2, 1985

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The subcommittee met at 10:05 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Dave Durenberger (chairman of the subcommittee) presiding.

Present: Senator Durenberger.

## OPENING STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. The hearing will come to order.

This is the first of two hearings by this subcommittee on S. 483, the Intergovernmental Regulatory Relief Act of 1985 which I introduced earlier this year.

The bill is a response to the growing concern about the regulations of the National Government and their impact on our partners in the Federal system. Part of the concern is for the reach of the regulations. The National Government is ever more intrusive.

And part of the concern is for the cost. When the dollars shared with State and local governments were rising, it was perhaps easier to carry the mandate millstone, as Mayor Koch has called the burden of intergovernmental regulation. But now with the Federal grants being slashed across the board, State and local government officials rightly call attention to the costs they bear for presumed national purposes which are imposed on them through the intergovernmental regulatory system.

The earliest forms of intergovernmental regulation were the conditions attached to grants and money. For instance, grant programs for child welfare and highways in the second decade of this century required that States consolidate those functions in a single agency. You had to have a highway department or the Federal Government would not give you a grant.

The courts upheld these conditions of assistance because the State and local governments could avoid interference from the Federal partner through the simple expedient of refusing the grant. And so was launched what came to be called cooperative federalism. The National Government willingly used State and local governments as administrative agents because the conditional nature of the grant-in-aid system allowed the National Government to set

priorities for the whole system by priming the pump with a few dollars of aid.

Congress has become ever more inventive with its conditions. ACIR calls two of the newer forms partial preemption and cross-over. We will be hearing about those this morning. Often Congress imposes large burdens on State and local governments without ever fully understanding the effect of its actions. Or the courts may reach way beyond our original intent by turning innocent language into an excuse for overturning decisions of State and local officials.

The subcommittee has a long record of interest in the subject. During my first year as chairman in 1981, we passed the State and Local Government Cost Estimate Act—fiscal notes—which was based on steps taken in many State legislatures to protect their local governments from burdensome mandates. The Federal fiscal note act is administered by the Congressional Budget Office, and we will be hearing from them.

Finally, we will hear from a panel of State and local officials. Our subject today is the problem. In May, we will look at various forms of redress, including the reimbursement provisions of S. 483.

Our first witness today is Dr. John Shannon, Executive Director of the Advisory Commission on Intergovernmental Relations. He is accompanied by Larry Hunter, former director of this subscommittee. Welcome. Come on up.

Mr. SHANNON. Thank you, Senator. With your permission, I would like to introduce into your hearing record a copy of the ACIR prepared statement on this subject, and I will elaborate with some oral remarks.

Senator DURENBERGER. Without objection, the ACIR report will be made a part of the record, as will your statement in full.

## TESTIMONY OF JOHN SHANNON, EXECUTIVE DIRECTOR, ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, ACCOMPANIED BY LARRY HUNTER, RESEARCH DIRECTOR, ACIR

Mr. SHANNON. Mr. Chairman, the Advisory Commission has had a long record of sturdy support for fiscal notes and for reimbursement for mandates, not only at the Federal level but at the State level as well. On many occasions, I have testified before State legislative bodies and urged that States reimburse their localities for State-imposed mandates. Fortunately, this urging has received receptive attention in many States, and now we are once again urging reimbursement for mandates, but at this time at the Federal level itself.

There are many arguments in favor of the adoption of this type of policy, but I would like to emphasize just two of them. The first is that reimbursement for Federal mandates serves as a very necessary corollary to the great Federal retreat along the entire Federal aid front. There is a widespread fear throughout the State and local government community that Congress will come under increasing pressure to flex its regulatory muscles and to do with mandates what it had previously done with grants-in-aid.

So at least for the next 4 or 5 years, with the increasing stringency at the Federal level, it is reasonable to expect that Senators and Representatives will face that type of a demand from the special

interests. They will say, well, if you can't do it with money, do it with mandates; it is better than nothing at all. It is this natural reaction to a fiscal fact of life—increasing stringency—that makes your proposed legislation so timely.

There is a second major argument in support of your bill—reimbursement for Federal mandates would strengthen the forces of fiscal discipline and political accountability. In our Federal system, it is so easy for public officials at one level to take credit for some good thing and then require officials at another level to pay the price. It is especially easy when the officials at the higher level are not required to dig up the cash. They get the credit and the officials at the lower level are forced to pay.

But Senators and Representatives would be in a far better position to say "No" to the special interests if it were made crystal clear that Federal mandates would have to be accompanied with Federal reimbursement. This is one of the major needs of our Federal system—to make it easier for Federal officials to say no to those who want to do something on the cheap--in this case a Federal mandate that would have to be financed at the State and local level.

So this is the second major argument in favor of your legislation. It would strengthen the forces of fiscal discipline; it would focus political accountability and these are the reasons why I, for the Commission, solidly endorse the intent of your proposed legislation.

Mr. Chairman, that concludes my oral remarks to supplement the paper.

Senator DURENBERGER. John, without digging too far into the report, can you give us some idea of the compliance costs that are involved with Federal regulations? My notes tell me in 1978 this committee estimated the Federal regulatory compliance cost at about $130 billion. Other analysts put it nearer $200 billion a year. Overall, how much of the cost which General Motors incurs to produce a car is attributable to a Federal regulation. Is there some way to put a dollar amount or compliance on the intergovernmental regulation system?

Mr. SHANNON. Any attempt to put an overall price tag on cost ramifications of Federal mandates is a difficult task because initially you have to face up to this question; you have to ask yourself a hypothetical question: Would these activities be conducted by the State and local governments in lieu of some Federal regulation? So that is the first question you face.

The other is, if there is some reasonable evidence that even in the absence of the Feds flexing their regulatory muscles, some of this might be done, you come to the next question, Well, what about the incremental costs to State and local governments of a Federal mandate? What can you really pin down? And, obviously, this is an area where we are going to get great ranges in estimates. I have seen some of the estimates that New York State and local officials have placed on the cost of complying with Federal mandates, and they are dramatic. I am going to call on our Research Director, Larry Hunter, to add any view that he has as far as trying to put the precise dollar estimate on mandated cost incurred by State and local governments.

Mr. HUNTER. Part of the problem with making overall estimates is we have never been faced with having to do it before on a regular basis. Several studies have been completed, and I would refer to one completed by the Urban Institute several years ago. It took a sample of several cities and counties and tried to estimate the cost of six regulations. As you would suspect, the costs ranged considerably among different types of cities and counties. This may give you a feel for the ballpark.

For the six regulations the Urban Institute looked at across these seven cities and counties, the estimated cost ranged from a total of $6 to about $50 per capita. For the State of Minnesota, for example, that means the regulatory burden for those six regulations ranged somewhere between $25 million and $209 million.

When you get into this you discover the estimates can become controversial, and part of the problem is we simply haven't developed the methodology yet to do the kinds of estimates that we need.

Senator DURENBERGER. John, in your prepared statement, you note that 15 States have already acted either to limit the imposition of mandates on local governments or to provide for some partial reimbursements when a new mandate is imposed. Could you elaborate for the subcommittee on the nature of the State experience, the effect such legislation has had on the enactment of new mandates by State legislatures and the common form——

Mr. SHANNON [interposing]. Mr. Chairman, if I heard it once from State legislators, I heard it at least a hundred times, the main message to come out of their experience on this is the preventive character of the legislation. It nips in the bud so many pieces of proposed legislation that otherwise might have made it through the legislative process.

So almost unanimously the big message is that its great value is to head off mandates. It is a form of birth control, you might say, as far as unreimbursed-type of legislation. It is preventive in character.

Now, another bit of experience that we have drawn from the State, we have heard it many times, the objection that it is so difficult to make these estimates and the administrative problems involved are formidable. One is reminded of a line from Hamlet that great ideas become sicklied over with the pale cast of doubt and lose the name of action. To sum up, it is argued that the problems are so difficult, it is a good idea but it is something you can't get to from here.

But the States that have overcome this objection seem to be able to come up with estimates, and the process is not so expensive as to be counterproductive largely because it heads off so many mandates that otherwise would have trickled through. So these are the findings: One, if it is put in place, its major advantage is preventive, and second, that despite the early arguments that it is so complicated and so difficult to make estimates that it is possible to overcome these objections and to develop techniques that provide reasonable estimates.

Now, in the case of California they go beyond the estimate stage. If it turns out the State reimbursement is insufficient, the local governments can go back and ask for an additional amount. So

that is a technique used at the State level to handle the admittedly difficult problem of making precise estimates.

Senator DURENBERGER. Does it work?

Mr. SHANNON. It has worked.

Senator DURENBERGER. What I am looking for is a dimension of some kind. I get the impression from your testimony that it is the threat that works better than the actual implementation.

Mr. SHANNON. It prevents it. To have in place a mechanism that attempts to honestly come up with a reasonable figure is the thing that you need.

Senator DURENBERGER. One of the arguments we often make about Federal mandates and the ineffectiveness of Federal mandates is that they are difficult for State and local governments to implement in order to achieve the purpose intended. Is that a reality or are we just dealing with payment? Is part of the problem the way we structure mandates that makes it difficult for State and local governments to implement, and adds a cost that wouldn't necessarily be there if the mandate were more realistic?

Mr. SHANNON. Undoubtedly, there are examples of Federal mandates that on the face of them are difficult to carry out, and in other cases, I think there are mandates that are very clear, and there is no doubt as what is intended. But in many cases, there is just a substantial pricetag attached to them. Yes; mandates will range across the spectrum from very clearcut to those that are very vague and, obviously, State and local governments will tend to be resolve vagueness and resolve doubts in their favor.

Senator DURENBERGER. In your prepared statement, you list a series of Federal statutes which impose compliance costs on State and local governments. What would you suggest as a broad set of Federal regulatory principles which would let those of us here at this Federal legislative level know when the good that is achieved by a mandate surpasses the cost? I guess I am asking you one of these cost/benefit ratio questions. It seems to me there is a whale of a difference between implementing the Civil Rights Act and the right-turn-on-red laws.

Mr. SHANNON. What type of overall guidelines should national——

Senator DURENBERGER [interposing]. Do you have in your head some set of principles that might guide us, like a cost/benefit ratio, or is this something you want to think about?

Mr. SHANNON. Well, it would be difficult to tick off one, two, three, a set of sure guidelines, but I would suggest that the No. 1 concern would be cost, obviously, or what might be the intended cost. That is clearly the No. 1 concern of State and local governments is the financing of a Federal mandate. So the fiscal dimension is the principle that should, obviously, get the most urgent attention from Federal officials. Mr. Hunter may want to elaborate on these guidelines.

Mr. HUNTER. I think I would like to give some thought to laying down guidelines, but I think the point Dr. Shannon makes is that this isn't a precise science, and part of the benefit of this type of approach is not that we towed up with a great deal of precision what the costs are, but that there is some institutional mechanism that forces decisionmakers to look at the cost side.

We think on the benefit side, it is very difficult to quantify it as well, and the cost side is going to be no easier, but with some institutional mechanism that would force decisionmakers to look at both sides, we think more consideration could be given to a balance at present.

Senator DURENBERGER. John, let me ask your opinion, if you have one, about how good a job CBO has done on the fiscal note process. They are next on the agenda. I didn't notice anything very critical of the process they have set up to implement the fiscal note estimates in your statement. Do you have any comment on that? Do you have any comments on how CBO might do a better job in identifying or estimating the intergovernmental regulatory costs?

Mr. SHANNON. Mr. Chairman, I have no specific information or comments to make on the way they are handling the fiscal note situation at the present time.

Senator DURENBERGER. Thank you very much for your testimony. We will probably call on you again next month.

[Dr. Shannon's prepared statement follows:]

PREPARED STATEMENT OF JOHN SHANNON

Mr. Chairman, my name is John Shannon. I am Executive Director of the Advisory Commission on Intergovernmental Relations. I am accompanied today by Mr. Lawrence Hunter, the Commission's Research Director.

I appreciate the opportunity to appear this morning on behalf of the Advisory Commission on Intergovernmental Relations to share the Commission's views with you on S. 483, the Intergovernmental Regulatory Relief Act of 1985. As you know from your membership on the Commission, Mr. Chairman, the concepts embodied in your bill would help to implement one of the Commission's recommendations adopted in December 1982 in a report entitled Regulatory Federalism: Policy, Process, Impact and Reform." That report was the first in which the Commission focused directly on federal regulations that have a direct impact on states and their local governments. We found in that study that the extent to which the federal government regulates state and local governments increased dramatically during the 1960s and 1970s, and became increasingly burdensome and costly to the states and to their political subdivisions.

While it is difficult to object to many of these regulations individually, the overall pattern and cumulative effect has become of significant concern. As the eminent Constitutional lawyer Lawrence Tribe has commented:

No one expects Congress to obliterate the states in one fell swoop. If there is any danger, it lies in the tyranny of small decisions—in the prospect that Congress will nibble away at state sovereignty, bit by bit, until some day essentially nothing remains but a gutted shell." [1]

ACIR's study found that the federal government is chipping away increasingly in four different ways: Most federal-aid programs are accompanied by a host of collateral requirements not necessarily related to the purposes of the program, including such things as: extensive planning and intergovernmental consultation processes, citizen participation procedures, protections for the environment and civil rights, provision of relocation benefits, and much more; failure to comply with requirements in one program may bring loss of funds in another; the enforcement of some mandatory federal standards may become the responsibility of state and local governments, with or without cost reimbursement; and federal standards administered directly by the federal government may carry substantial costs of compliance for the states and their local jurisdictions.

Over the 1960–80 periods, the compliance costs and administrative burdens on state and local governments grew rapidly with the enactment of major statutes in the fields of civil rights, highway beautification, water quality, meat inspection, architectural barriers, environmental protection, occupational safety and health, equal employment opportunity, education, coastal zone management, flood protection,

[1] Lawrence Tribe, "American Constitutional Law," (Mineola, NY: The Foundation Press, 1978), page 302.

rights of the handicapped, endangered species, safe drinking water, hazardous wastes, health cost containment, energy conservation, fair labor standards, age discrimination, solid wastes, and surface mining. And that drum beat is continuing. For example, 1984 brought enactment of legislation mandating a 21 year drinking age, limiting the use of sale-leaseback mechanisms in the financing of public projects, expanding AFDC and medicaid costs for many states, mandating state administration of new federal truck standards, and requiring greater efforts by the states to enforce the collection of child support payments. Other bills considered in 1984, but not enacted, would have had significant cost implications for state and local governments in the fields of product liability and public employee pensions.

By the late 1970s and early 1980s, the cumulative effects and costs of this regulatory burden had become apparent. Criticism came from across the political spectrum. Conservatives who long feared that federal controls would follow federal dollars were joined by liberals crusading for reform. "The mandates are piling up so fast that liberal governors and mayors are enrolling in a cause once pressed only by arch-conservatives," editorialized the New York Times.[2] New York City Mayor Edward Koch spoke out against the new mandates: "We cannot allow the powerful diversity of spirit that is a basic characteristic of our federal system to be crushed under the grim conformity that will be the most enduring legacy of the mandate millstone." [3]

Local governments, as a matter of fact, have especially great difficulties with federal mandating because of their limited discretion in raising their own revenues. Thus, intergovernmental aid becomes crucially important to the ability of many local governments throughout the nation in meeting the cost of mandates.

The states, of course, have been pressing mandates upon their localities much longer and in a much wider array of activities then the federal government. And the issue of state mandates, therefore, surfaced earlier at the state level. Today, four-fifths of the states have formal procedures to address this mandating problem by requiring, at least, that fiscal notes be attached to pending legislation that would impose new costs on local governments. At least 15 states have acted even more positively to restrict the use of mandates or require that they be accompanied by at least partial reimbursements for any additional costs imposed. And, several states—including Minnesota—have undertaken major mandate studies and cataloging efforts.

In it's 1982 report on "Regulatory Federalism," our Commission recommended applying this state-initiated approach to the mitigation of federal mandates, and the Congress, in fact, had already begun to move in that direction—with your help, Mr. Chairman. While our Commission's report was still in preparation, Congress passed legislation requiring the Congressional Budget Office to prepare and attach fiscal notes to each pending bill that would have significant impacts on state and local government finances aggregating $200 million, or more, per year nationwide. That requirement was enacted in December 1981, and CBO began immediately to provide such fiscal notes, often for legislation with smaller fiscal impacts as well. The Commission is grateful to you, Mr. Chairman, for your key role in getting this process started.

S. 483, the Intergovernmental Regulatory Relief Act of 1985, would supplement the fiscal notes process by requiring reimbursement to state and local governments of added costs incurred by all new federal mandates (at 100% of such costs), and would phrase-in over a ten-year period full reimbursement for older mandates as well. The bill also would require an annual report to the Congress supplementing the President's annual budget submission to give a complete picture of the costs of existing mandates and to propose ways and means of minimizing their impact on state and local governments. In the Commission's view, legislation similar to this is greatly needed.[4]

Fiscal notes, a comprehensive review of mandates, and a reimbursement program, taken together, would, in the Commission's view, help to dampen, and perhaps even reverse the growth of federal mandates. Reimbursement is a critical element in this triad. It is the forcing mechanism in drawing serious attention to the costs of mandates by the Congress and by the executive branch. The Commission believes that federal responsibility for the costs would limit the enactment of new mandates to those in which the federal government has a vital interest, and would cause a re-evaluation of past mandates in the same light. It also would be expected to focus

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[2] "Fighting Federal Mandates," New York Times, Against 16, 1980, page 20.

[3] Edward I. Koch, "The Mandate Millstone," The Public Interest, 61 (Fall 1980), page 42.

[4] Advisory Commission on Intergovernmental Regulations, "Regulatory Federalism," page 265.

greater attention on legislative provisions allowing alternative means of complying with mandates that might offer cost savings at the state and local levels.

This fiscal disciplining of the federal regulatory process is necessary to help resist the ceaseless pressures of special interests and to check the growth of government. For those federal mandates that are determined by the Congress to be essential even in light of their costs, reimbursement to the states and localities is now becoming ever more necessary as the deficit reduction effort continues to take its toll on the federal-aid system.

Mr. Chairman, I commend you for introducing the Intergovernmental Regulatory Relief Act of 1985 and for holding these hearings. This is vital issue for state and local governments throughout the nation.

Mr. Hunter and I will be happy to answer any questions that you might have.

Senator DURENBERGER. Back in 1981, we passed the State and Local Cost Estimate Act, better known as the legislation creating the fiscal notes. We instructed the Congressional Budget Office to estimate the cost to the State and local governments of proposed Federal legislation where the cost exceeded $200 million or imposed a significant burden on one region or one government.

The Congressional Budget Office has now had one full Congress worth of experience, and Mr. Jim Blum, Assistant Director of the CBO's Cost Analysis Division is here today to tell us about this exciting experience and comment on S. 483.

Jim, thank you very much for being here. Your full text of statement with appendixes will become part of the record and you may proceed.

## TESTIMONY OF JAMES BLUM, ASSISTANT DIRECTOR, BUDGET ANALYSIS DIVISION, CONGRESSIONAL BUDGET OFFICE

Mr. BLUM. Thank you, Mr. Chairman. I am pleased to have this opportunity to review with you this morning our experience under the State and Local Government Cost Estimate Act of 1981. In the interest of time, I will just quickly summarize a few of the high points in my statement.

Senator DURENBERGER. Fine.

Mr. BLUM. I would like to emphasize two points about the way we go about doing the State/local cost estimates. First we have interpreted the costs to mean the direct budgetary costs or savings that would be incurred by State and local governments as a result of reported legislation. Such costs are equivalent to the kinds of direct budgetary costs or savings that we have been doing for sometime with respect to the Federal Government with reported legislation. In doing that, we are interested in whether the budgets of State and local governments have to expand or if savings can be achieved as a result of legislation?

We do not try to estimate possible second-order effects such as what impacts a piece of legislation might have on the economy of a State which in turn will affect the revenues that it will accrue.

Usually, we also don't get into some of the paperwork or other administrative costs. These costs seem to be inconsequential in comparison with the nature of the direct thrust of the legislation.

Second, and more important, we have adopted the policy of doing State and local government cost estimates for all bills reported in the House and Senate, not just those that are limited to the $200 million annual cost threshold or the exceptional fiscal consequence for a particular geographic area. The reason for that is that we

found we have to do much of the analytic work involved to do the cost estimate just to determine whether or not a bill will meet one of these thresholds. Therefore, we decided we would complete our analysis and present the results to the Congress as a routine matter.

So far we have not run into any major problems in preparing State and local cost estimates. We have been checking over our experience with the 98th Congress, when we prepared about 1,200 separate bill cost estimates that included an assessment of State and local costs.

The vast majority of these estimates—fully 89 percent—concluded there would be no cost impact. Only 134 of these bill cost estimates involved any estimated costs to State and local governments and, for most of these bills, the amount of costs savings that were involved on an annual basis was less than $200 million. Our records indicate that only 30 bill cost estimates exceeded the $200 million threshold. Many of these were for different versions of the same legislation.

Turning to the relevance of this expenditure to S. 483, I personally don't believe the work we are doing today is comparable to the kind of cost estimate work that would be required under S. 483. As I read the bill, S. 483 is focused on the actual cost impact of Federal regulations, whereas our present work is focused on the potential cost impact of proposed Federal legislation.

While I believe our cost estimates provide useful information to the Congress for gauging the potential cost of its legislation, I don't think they are precise enough or detailed enough to be used as a basis for actually reimbursing State and local governments for the costs that they might incur.

There is usually some range of uncertainty in our cost estimates, particularly for new programs where we have no prior cost experience to draw on. Also, the more regulatory authority that is delegated to an administering agency in a bill, the greater is the uncertainty of the bill's State and local cost impact.

Furthermore, we do not prepare cost estimates for individual units of government. Instead we rely on estimates of average impacts on various categories of State and local governments to come up with an aggregate total.

We think, we hope at least, that we are able to provide a reasonable order of magnitude, but the acutal cost could turn out to be very different. My reading of S. 483 is that it would require a level of accuracy and detail that I don't think we could provide with any reasonable degree of certainty.

The bill would also lower the significant bill threshold in our State/local cost estimates from $200 million to $100 million. As I indicated earlier, since we have chosen to ignore those thresholds for purposes of doing our estimates, that reduction in threshold would have no significant effect on our present work.

Mr. Chairman, I will be glad to answer any questions that you have.

Senator DURENBERGER. I guess I am a bit surprised at the difference between the two testimonies so far. I wonder if we are talking about the same fiscal note process. According to your testimony,

the fiscal note process has little or nothing to do with the estimate of regulatory compliance costs; is that correct?

Mr. BLUM. No, I wouldn't reach that conclusion. I have tried to distinguish the significant budgetary costs that might be imposed by Federal legislation on State and local governments from what might be incidental administrative costs. For example, to make that distinction, if a piece of legislation would require the States to create a whole new administrative mechanism or to expand greatly an existing one, clearly this would have budgetary cost effects, and we would do our best to indicate that those budgetary effects might be.

Now, in effect, it would require us to estimate what the present level of effort is at the State level and to estimate how that effort might have to be increased as a direct result of the legislation. That is not an easy task analytically, but we would do our best to do that.

If, on the other hand, a piece of legislation was designated to change benefit levels or impose other major types of budgetary costs, that is where we would put our emphasis in any analysis. We would not focus on incidental administrative expenses that might go along with the provision of benefits, such as holding public hearings, printing application forms, preparing reports, and so forth.

Senator DURENBERGER. I think that is what I was trying to get at. I am beginning to see where you are drawing the distinction. If Senator Lawton Chiles were here today, the ranking member of the subcommittee, he would ask you about the paperwork costs, and you would say that isn't the way CBO views the bill. You just mentioned the cost of holding hearings, that is not the way you estimate——

Mr. BLUM [interposing]. Excuse me for interrupting, but we would estimate it if it would impose a significant cost, an added cost. If hearings had to be held every day of the year for an extensive period of time, obviously there would be an increased budgetary cost.

Senator DURENBERGER. Take NEPA, the National Environmental Policy Act, which has a whole set of hearings sort of in a due process context, would that be different from your one-time public hearing in order to satisfy a requirement?

Mr. BLUM. Yes, it would. If that piece of legislation were coming along today for the first time, that would be a cost that we would try to estimate. Fortunately, that is a piece of legislation that is already enacted and we don't have to worry about what those costs are now. We are focused exclusively on new legislation and potentially new regulations.

Senator DURENBERGER. In your prepared text you point out that CBO only attempts to estimate direct costs or savings under fiscal notes. Direct costs, according to your testimony, would include the matching funds provided by a State or local government pursuant to a Federal grant program. However, paperwork costs would not be a direct cost because you assume these costs would be "absorbed"—I am quoting you—"absorbed within existing budgetary resources."

What stops you from assuming the same thing with respect to the State matching portion of the Federal grant?

Mr. BLUM. To some extent, we do the same thing on the State matching portions. If there is already a level of effort being made by the States that we can detect, that could be counted toward the State match, we would not include it as a new additional direct cost for the State governments. It is only where, in our view, the legislation would cause the States or local governments to do something new over and above what they are now doing, that we would count it as a cost.

Senator DURENBERGER. Mr. Blum, thank you very much for your testimony. We may see you again in a month, too.

Mr. BLUM. Thank you, Mr. Chairman.

[Mr. Blum's prepared statement follows:]

PREPARED STATEMENT OF JAMES L. BLUM

Mr. Chairman, I am pleased to have the opportunity to review with you today the experience of the Congressional Budget Office (CBO) in implementing the State and Local Government Cost Estimate Act of 1981. I will also comment briefly on how this experience might be relevant for the state-local cost estimates that would be required by S. 483, the Intergovernmental Regulatory Relief Act of 1985.

STATE AND LOCAL GOVERNMENT COST ESTIMATE ACT OF 1981

The State and Local Government Cost Estimate Act, enacted in December 1981, directs the CBO to prepare estimates of the cost that would be incurred by state and local governments in carrying out or complying with legislation that is reported in the House or the Senate. These cost estimates may be limited to bills that, in the judgment of CBO, are likely to result in an aggregate annual cost to state and local governments of at least $200 million, or are likely to have exceptional fiscal consequences for a geographic region or a particular level of government. The state-local cost estimates are to be included in the estimates of costs that would be incurred by the federal government in implementing reported legislation that CBO has been doing since 1976. This new costing requirement took effect on October 1, 1982, and CBO's first state-local cost estimate was prepared in November 1982.

CBO GUIDELINES AND PROCEDURES

CBO did a lot of planning work during 1982 to get ready for the new costing requirement. We established contact with a number of officials of state and local governments, representatives of various associations of state and local governments, executive branch personnel, and intergovernmental research groups. The purpose of this effort was to provide our cost analysts ready access to information needed to prepare the state-local cost estimates. We also developed guidelines, procedures, and standard formats for our cost analysts to follow in preparing the cost estimates. A copy of these guidelines and procedures is appended to my statement.

I would like to emphasize two points about our guidelines. First, we have interpreted costs to be the direct budgetary costs or savings that would be incurred by state and local governments as a result of the reported legislation. Such costs are equivalent to the direct budgetary costs and savings that CBO estimates for the federal government for implementing reported legislation. We do not try to estimate possible second-order effects of legislation, such as possible effects on state tax revenues as a result of a bill's impact on the economy. We also generally do not try to estimate the cost of paperwork or administrative costs of implementing legislation if these could be absorbed within existing budgetary resources.

Second, we have adopted the policy of preparing state-local cost estimates for all bills reported in the House and the Senate, whenever this is possible, and not just those limited to annual costs in excess of $200 million or those having exceptional fiscal consequences for a particular geographic area. To determine, even tentatively, whether or not a bill would meet the $200 million threshold or the exceptional fiscal consequences criteria, we would have to do much of the required analytical work to complete a cost estimate. Therefore, we decided that we should go ahead and complete our analysis for as many bills as possible and provide this information to the Congress as a routine matter.

EXPERIENCE DURING THE 98TH CONGRESS

During 1983 and 1984, CBO prepared 1,214 bill-cost estimates that included an assessment of state-local government costs. The vast majority of these bill-cost estimates—1,080 or 89 percent—concluded that there would be no cost impact for state and local governments. Only 134 of these bill-cost estimates involved any estimated costs or savings for state and local governments, and for most of the bills the estimated annual costs were below the $200 million annual threshold. Our records indicate that only 30 bill-cost estimates exceeded the $200 million threshold, and many of these were for different versions of the same legislation.

Although CBO is only required to prepare bill-cost estimates for bills reported from committee, we are often asked to prepare cost estimates for bills at other stages of the legislative process. For example, many committees want to know the cost implications of bills before they proceed to the reporting stage. In these cases, we also include the potential state-local cost impact in our bill-cost estimates whenever possible. Of the 1,214 state-local cost estimates that we prepared during the 98th Congress, 177 were for bills at other legislative stages.

So far, we have not run into any major problems in preparing state-local cost estimates. Most of the cost estimates involve ongoing programs where our analysts have sufficient data on hand to estimate the state-local cost impact, or can obtain the needed information fairly quickly through telephone calls to state and local program officials. In some cases, particularly for new program proposals, extensive staff effort is required to develop estimates of potential cost impact. In these cases, we try to obtain data through all possible sources, including such state-local government associations as the Municipal Finance Officers Association.

RELEVANCE OF CBO EXPERIENCE FOR S. 483

I do not believe the cost estimating work that would be involved under S. 483 is comparable with our present state-local cost estimating efforts. S. 483 is focused on the actual cost impact of federal regulations, whereas our present work is focused on the potential cost impact of proposed federal legislation. While I believe our state-local cost estimates provide useful information to the Congress for gauging potential costs of legislation, I do not think they are precise or detailed enough for reimbursing state and local governments for actual costs. There is usually some range of uncertainty in our cost estimates, particularly for new programs where we have no prior cost experience to draw on. Also, the more regulatory authority delegated in a bill, the greater is the uncertainty of the bill's potential state-local cost impact. Furthermore, we do not prepare cost estimates for individual units of government, but rely on estimates of average impacts on various categories of state-local governments. We hope that we are able to estimate a reasonable order of magnitude, but actual costs could turn out to be very different. S. 483 would require a level of accuracy and detail that I don't think we could provide with any reasonable degree of certainty.

S. 483 would require reimbursement of regulatory costs not only for implementing new legislation but also for any governmental regulation which took effect prior to the date of enactment of the bill. Title I of S. 483 would require the President to submit to the Congress each year a report on actual and projected regulatory costs. Section 202 would also require the CBO to prepare each year a similar report that would be used as the basis for appropriations. The measurement of actual regulatory costs would be an enormous undertaking. The methodological and data problems would be quite severe. I doubt that CBO could do much to develop an independent analytical capability to estimate these costs. I am not confident that we could even do a good job in evaluating the estimates contained in the President's report. This might be a task better suited to an agency with accounting and auditing skills that could review in depth the basis for these estimates.

S. 483 also would lower the significant bill threshold for our state-local cost estimates from $200 million to $100 million. As I have indicated earlier in my statement, we have chosen to ignore the $200 million threshold so that lowering it would not have any significant effect on our present cost estmating work.

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Alice M. Rivlin
Director

November 29, 1982

MEMORANDUM

TO: Budget Analysis Division Staff

FROM: C.G. Nuckols

SUBJECT: Guidelines and Procedures for State and Local Cost Estimates

This memorandum provides interim guidelines and procedures for making state and local cost estimates under the requirements of the State and Local Cost Estimate Act of 1981, P.L. 97-108. Please read these guidelines carefully. We will use them throughout the lame duck session of the 97th Congress.

To help determine whether these guidelines should be revised, please send me written comments that suggest solutions to problems you encounter with them during the lame duck session. If necessary, the guidelines could be revised, based on experience from the lame duck session, before the 98th Congress convenes. Ultimately, these guidelines will be incorporated into an updated version of CBO's general instructions for bill cost estimates.

## COVERAGE

The Act 1/ requires CBO to produce estimates when, in the opinion of the Director, the annual aggregate cost of the law to state and local governments is $200 million or more, or when the cost "is likely to have exceptional fiscal consequences for a geographic region or a particular level of government."

Appropriations bills are not covered by this requirement. Cost estimates for tax legislation will be prepared by the Tax Analysis Division, when it is feasible to do so.

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1/ A copy of Section 403 of the Budget Act of 1974, as amended by the State and Local Cost Estimate Act of 1981, is included as Appendix A.

The $200 Million Threshold

Calculations of state and local costs should be made if there is a reasonable expectation that they will exceed the $200 million per year threshold.

If costs are estimated to fall below the threshold, a statement or discussion of why they are below should be included in the CBO cost estimate. For example, such a discussion might state that with a federal grant authorization of $375 million per year and a required state/local match of 25 percent, costs would be $125 million per year, unless the states had previous spending that would lower costs or required conditions of aid that would raise costs. Alternatively, the discussion could note that an entitlement change resulting in federal savings of $300 million per year with a state financial participation of 50 percent would result in state/local savings of $150 million per year unless there were offsetting expenditures in state-funded programs. Where the analyst has calculated annual state and local government expenditures that are below $200 million, or could do so with little difficulty, they should be included in the cost estimate.

The following language should be inserted for bills with no state and local costs:

"The Congressional Budget Office has determined that the budgets of state and local governments would not be affected directly by the enactment of this bill."

The following language should be inserted for bills with state and local costs below $200 million per year:

"The Congressional Budget Office has determined that the budgets of (Insert 'state' or 'state and local' or 'local') governments would be affected directly by the enactment of this bill. The annual cost impact, however, is estimated to be less than $200 million." (Add pertinent information that explains why the annual cost estimate will be under $200 million.)

The "Exceptional Fiscal Consequences" Threshold

The Act requires cost estimates for bills that are "likely to have exceptional fiscal consequences for a geographic region or a particular level of government." It is not easy to determine if a bill will have "exceptional fiscal consequences." The effects of federal legislation are normally varied across the states; it is uncommon for the effects of a bill to be concentrated on a single government or region. Consequently, it is not

likely that many bills will lead to cost estimates being prepared for particular states or regions. No single amount seems suitable for an "exceptional fiscal consequences" threshold. The $200 million per year threshold represents an average of .05 percent of state and local expenditures. Thus $25 million per year could be a suitable threshold for California and New York, whose budgets are sharply above those of other states. A threshold of $5-10 million per year could be a reasonable "exceptional fiscal consequence" for other states, depending on the annual level of state and local expenditures in each state.

## COST FIGURES

Costs are to be calculated for each year over a five-year period. The cost figures to be reported are state and local cash outlays. Outlays should be reported for federal fiscal years.

Range estimates may be used to show state and local costs under alternative assumptions about state participation, administrative actions, and other factors.

Geographical breakouts of national cost figures should not be released unless the methodology provides a state-by-state estimate that is appropriate for release.

CBO will not require the use of a set of standard geographic regions. Although the Census Bureau has developed standard geographic regions and divisions, a number of federal agencies use different classifications of states into regions. If the cost estimate has a significant regional impact, the classification of regions that best describes this impact should be used.

## COST CONCEPTS

The costs identified in the CBO estimates will be the direct budgetary costs or savings to state and local governments. Such costs are equivalent to the direct budgetary costs or savings we presently estimate for the federal government. Cost estimates should not be prepared for bills with second-order effects on states and localities (e.g., a bill that affects state tax revenues through its impact on the economy).

An example of direct budgetary costs is shown below for the case of a federal grant of $75, which requires a $25 state match. There are other conditions of aid associated with the grant--for example, regulatory requirements or administrative costs--which total $10. State costs in this case would be $35.

| | | |
|---|---|---|
| (GR) | Grant revenues of states | $75 |
| (M) | Match put up by states | $25 |
| (COA) | Other conditions of aid | $10 |

State costs = M + COA = $25 + $10 = $35

While the cost concept is straightforward, implementation will often be difficult. First, it is necessary to know what state and local expenditures would be in the absence of the legislation. Second, it is necessary to estimate state responses. These two issues are discussed below.

Estimates should be of incremental costs and savings resulting from legislation. In order to develop estimates of these incremental changes, it is necessary to project what state and local governments would spend in the absence of the legislation. For example, had the states already been spending the amount of a required match under a new federal grant program, and thus could be expected to continue that level of spending in the absence of the federal program, state costs would be only the costs of any new conditions of aid, as shown below.

| Without the new grant | With the new grant | |
|---|---|---|
| State expenditures (SE) $25 | GR | $75 |
| | M | $25 |
| | COA | $10 |

State costs = M + COA - SE = $25 + $10 - $25 = $10

Measuring the effect on state budgets of federal legislation will often entail estimation of state responses. For example, when federal welfare programs are reduced, to what extent do existing state-only welfare programs automatically incur added costs and/or to what extent will states pass legislation raising state welfare costs? Estimation of these state responses is difficult and subject to considerable uncertainty, and the use of ranges for the estimates is often appropriate. For discretionary accounts, CBO's estimates will continue to be based on the assumptions that all funds authorized are appropriated (or obligated) and that all the appropriated funds are ultimately expended. If historical experience indicates that authorized funds have generally not been fully appropriated or that appropriated funds will not be fully obligated, and that this would have an effect on state and local costs, the basis of the estimate should note the possibility of this effect. If other assumptions are used for the discretionary accounts (for "such sums" legislation, for example), the state and local

government cost estimates should be consistent with the federal estimate. Estimation of what states would spend in the absence of the proposed legislation may be particularly difficult in the case of a reauthorization of an ongoing program. In such cases, it may be necessary to use a range of possible state responses in the absence of a reauthorization.

Some legislation may require state and local governments to comply with its provisions; other legislation may permit voluntary actions. Where the program is voluntary, states may experience added costs but the nature of the costs is different from the case where the state costs are mandated. Each cost estimate should identify the assumptions about whether costs are voluntary or mandatory, including the levels of participation, and, if possible, should disaggregate the budgetary effects accordingly.

Where a program is reauthorized at the end of its legislative life, costs as estimated by CBO are for the total authorization. The basis of estimate, however, should note the difference between the reauthorized program level and the previously authorized and appropriated levels, especially where a different financing level or changes in the federal/state matching ratio affects the estimated outlays.

Where a program is reauthorized during its existing life, the net incremental effect should be calculated. That is, state costs under the existing authorization will be netted against the new authorization to measure the new state costs or savings. This applies for changes in the funding levels, matching ratios, program parameters, grant eligibility, etc.

FORMAT

State and local cost estimates will be incorporated into the existing cost estimate form. Section 5 will be entitled "Estimated Cost to the Federal Government" and will include the basis of estimate for federal expenditure (formerly Section 6) as part of the fifth section. The comparison of estimate section will become Section 7 and the previous estimate for federal costs section will become Section 8. Sections 7 and 8 will be used for information pertaining to both federal and state/local estimates.

A separate section (Section 6) entitled "Estimated Cost to State and Local Governments" will be added. This section will include a detailed explanation of the basis of the estimate.

A model cost estimate format is included as Appendix B.

PROVISION OF COST ESTIMATES TO COMMITTEES

State and local cost estimates are to be included in committee reports. A completed federal cost estimate, however, should not be withheld from a committee if a related state and local cost estimate is incomplete. In such cases, the state and local cost estimate should be completed as soon as possible. A revised federal cost estimate will be made if the completed state and local cost estimate suggests the need to change the initial federal cost estimate.

The appropriate version of the language shown below should be inserted for instances in which the state and local estimate has not yet been completed when the federal estimate is forwarded:

- o Include in the cover letter for the cost estimate if state and local cost is expected to be significant:

  "The enclosed estimate addresses the cost impact of this bill on the federal budget. Preliminary analysis indicates that the bill could have a significant impact on the budgets of (Insert 'state' or 'state and local' or 'local') governments. The results of CBO's analysis will be provided (to the Committee) by (Give date when possible, otherwise insert 'as soon as possible')."

If no information on state and local costs is available, or if the impact is probably small, no reference is necessary in the cover letter.

- o Include in Section 6 of Cost Estimate:

  "The Congressional Budget Office analysis of the state and local costs of this bill is not yet complete. Preliminary results, however, indicate that (Insert appropriate adjective 'significant', 'some', etc.) (Insert 'state' or 'state and local' or 'local') budgetary impacts are possible. The final results will be available by (give approximate date where possible, otherwise insert 'as soon as possible')."

EXAMPLE

6. Estimated Costs to State and Local Governments:

This bill would provide $600 million in federal funds to states and localities for use in airport development programs. Estimated state and

local outlays for this program, including matching funds and administrative costs, are shown in the following table.

(By fiscal years, in millions of dollars)

| | 1984 | 1985 | 1986 | 1987 | 1988 |
|---|---|---|---|---|---|
| State and local outlays | 42.4 | 42.4 | 42.4 | --- | --- |

Any state, county, municipal or other public agency is eligible for airport development grants if its airport is listed in the National Airport System Plan. The federal government share of allowable costs may not exceed 75 percent for a commercial air carrier airport and 90 percent for other airports (small general aviation airports and commuter service airports). It was assumed, based on recent historical experience, that one-third of the grants-in-aid to airports (or $200 million) will go to the large commercial air carrier airports; these would require a 25 percent state/local match, totalling $66.7 million. Two-thirds of the grants (or $400 million) are assumed to be awarded to smaller airports; these would require a 10 percent state/local match, totalling $44.5 million. It was further assumed that recent historical experience for disbursement of grant funds would continue, that is, one-third of the total amount in each of the three years of eligibility. Administrative costs for state and local governments, including the preparation of environmental impact statements, are estimated to be about $16 million.

Because the grants-in-aid to airports program has been in existence since 1970, there is no clear basis to project state spending in the absence of this legislation. States and localities spent approximately $30 million in fiscal year 1982 for similar purposes.

## APPENDIX A. SECTION 403 OF THE CONGRESSIONAL BUDGET ACT AS AMENDED BY THE STATE AND LOCAL COST ESTIMATE ACT OF 1981

CHANGES IN EXISTING LAW BY THE BILL

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### SECTION 403 OF THE CONGRESSIONAL BUDGET ACT OF 1974

ANALYSIS BY CONGRESSIONAL BUDGET OFFICE

SEC. 403. (a) The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate; [and]

*(2) an estimate of the cost which would be incurred by State and local governments in carrying out or complying with any significant bill or resolution in the fiscal year in which it is to become effective and in each of the four fiscal years following such fiscal year, together with the basis for each such estimate; and*

[(2)](3) a comparison of the [estimate] *estimates* of costs described in paragraph (*1*) *and* (*2*), with any available [estimate] *estimates* of costs made by such committee or by any Federal agency.

The [estimate] *estimates* and comparison so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.

*(b) For purposes of subsection (a)(2), the term "local government" has the same meaning as in section 103 of the Intergovernmental Cooperation Act of 1968.*

*(c) For purposes of subsection (a)(2), the term "significant bill or resolution" is defined as any bill or resolution which in the judgment of the Director of the Congressional Budget Office is likely to result in an annual cost to State and local governments of $200,000,000 or more, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government.*

## APPENDIX B. SAMPLE FORMAT OF A COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

Date

1. BILL NUMBER: Not yet assigned.

2. BILL TITLE: Clean Air Act Amendments of 1982

3. BILL STATUS:

   As ordered reported by the Senate Committee on Environment and Public Works, August 19, 1982.

4. BILL PURPOSE:

   This bill amends and extends the Clean Air Act. It requires the Environmental Protection Agency Administrator to conduct studies and prepare reports regarding clean air issues, including hazardous air pollutants, indoor air quality, wood smoke pollution, and industrial emission limits. The bill authorizes the appropriation of $5 million in each of fiscal years 1983-1985 for matching grants to state projects to develop improved or innovative methods of neutralizing or restoring the buffering capacity of bodies of water altered by acid rain. An additional appropriation of $50 million is authorized for fiscal year 1984 to fund up to 25 percent of a joint demonstration project among the Tennessee Valley Authority (TVA) and others for electricity generation using an atmospheric fluidized bed combustion process. Appropriations authorized for purposes of carrying out other provisions of the bill amount to $192 million for fiscal year 1983, $215 million for 1984, and $211 million for each of fiscal years 1985 through 1987.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

   (by fiscal years, in millions of dollars)

| | 1983 | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|---|
| Authorization Level | 197 | 270 | 216 | 211 | 211 |
| Less: Estimated Existing Appropriation | 155 | --- | --- | --- | --- |
| Net Authorization | 42 | 270 | 216 | 211 | 211 |
| Estimated Outlays | 25 | 143 | 182 | 207 | 223 |

   The costs of this bill fall within budget function 300.

Basis of Estimate:

The authorization levels are those stated in the bill. Appropriations of $155 million was provided by Public Law 97-272 for clean air programs for fiscal year 1983. An additional appropriation of $10.5 million for EPA salaries and expenses was included in that appropriation bill, but EPA has not yet allocated that amount among programs. The actual appropriation for air programs will be higher by the amount allocated to clean air programs. Beginning with fiscal year 1984, appropriations are assumed to occur prior to the start of each fiscal year. Based on information provided by the TVA, the cost of the demonstration project is estimated to be $200 million. For purposes of this estimate, it was assumed that the TVA will be successful in securing 75 percent of that amount from private sector contributions, and the $50 million authorized to fund the remaining 25 percent will be appropriated. Outlays were estimated based on information from the TVA and the past spending patterns for clean air programs.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

This bill would provide $5 million for each of fiscal years 1983-1985 to states to fund up to 75 percent of costs for programs related to neutralizing or restoring the buffering capacity of acid-altered bodies of water. In addition, certain administrative responsibilities would be added to those currently conducted by state and local governments. Estimated state and local outlays resulting from enactment of this bill are shown in the following table.

(by fiscal years, in millions of dollars)

| | 1983 | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|---|
| Estimated state and local outlays | 16 | 17 | 12 | 10 | 10 |

There is no clear basis for estimating how much of the outlays shown in the above table would be expended by states in the absence of this bill.

Basis of Estimate:

For purposes of this estimate, it was assumed that, in order to receive matching grants in fiscal years 1983-1985, eligible states will provide voluntarily 25 percent of program costs for acid-altered bodies of water, resulting in outlays of $1 million in 1983, $2 million each year in 1984 and 1985, and less than $1 million in 1986. Initial program development costs of increasing state administrative responsibilities, primarily for prevention of significant deterioration (PSD) and acid rain control programs, are estimated to average $500,000 per state, or $25 million--$15 million in 1983, and $10 million in 1984. The estimate assumes that the acid rain control program is mandatory and that the PSD requirements are voluntary with all eligible

states participating. Ongoing program costs, beginning in 1984, are estimated to be an average of $150,000 per state or $7.5 million annually (at 1982 prices). These costs will vary depending on size, location, and response of each state. Corresponding outlays are estimated to be $5 million in 1984, and $10 million annually thereafter. In 1981, states spent about $230 million for clean air programs. This estimate was based on information obtained from the State and Territorial Air Pollution Program Administrators.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY: Anne E. Hoffman (226-2860)

10. ESTIMATE APPROVED BY:

James L. Blum
Assistant Director
for Budget Analysis

Senator DURENBERGER. Next is our panel of witnesses. Today's panel includes James B. McNulty, the mayor of Scranton, PA, who is here representing the United States Conference of Mayors; Mr. Wilce Cooke, mayor of Benton Harbor, MI, representing the National League of Cities; Paul Violette, majority floor leader, Maine State Senate is representing the National Conference of State Legislators, but has not appeared yet. We will start without him, but will stick around in the event he is on his way.

Mr. McNulty, you have a complete statement, which is par for the course. You may proceed to read it, summarize it, talk from your own experience. Do whatever you want to do. Thanks for being here.

**TESTIMONY OF JAMES B. McNULTY, MAYOR, SCRANTON, PA, REPRESENTING THE U.S. CONFERENCE OF MAYORS; WILCE COOKE, MAYOR, BENTON HARBOR, MI, REPRESENTING THE NATIONAL LEAGUE OF CITIES; AND PAUL VIOLETTE, MAJORITY FLOOR LEADER, MAINE STATE SENATE, REPRESENTING THE NATIONAL CONFERENCE OF STATE LEGISLATURES**

Mr. MCNULTY. Thank you, Mr. Chairman. First of all, I would like to express the appreciation of the Conference of Mayors to appear before your subcommittee, and personally I would like to thank for the invitation to come back again since I did appear before you on your capital budget and Federal capital budget. I will summarize the statement and ask the full statement be printed in the record.

As you know, many cities across the country have encountered numerous problems and substantial costs as a result of Federal mandates, and New York City alone has recently estimated they have incurred $6.5 billion in additional direct costs in fiscal year 1983 as a result of Federal and State mandates. Cities across the country, including my own, have confronted similar problems, although on a smaller financial scale. However, the total costs across the country as a result of Federal mandates is truly staggering.

In the past decade, the Federal Government has imposed many legislative and regulatory restrictions which have been very costly for cities. The Conference of Mayors has not opposed these mandates but believe many are justifiable from a Federal perspective. We do believe, however, the Federal Government should reimburse States and cities for the increased costs associated with these mandates.

The opposite situation has prevailed in recent years with housing, wastewater treatment grants, transportation, education and various social and community service programs suffering sharp reductions. I would like to cite a few examples of the costly mandates imposed on State and local governments.

First, there has been much environmental legislation in recent years affecting local governments' budgets and costs. The Clean Water Act requires all new wastewater treatment plants to be at secondary treatment capacity and for new plant planning and construction, the Federal Government provides 75 percent of the costs, but the cities are forced to pay all of the operating and maintenance costs.

I would like to add a parenthetical, in the city of Scranton's case, Mr. Chairman, we have met those requirements. Unfortunately, some of the adjoining communities have not, and we just went through a contamination of our complete water supply because of the lack of those kinds of treatments facilities being constructed by neighboring suburban areas who claim they did not have the resources in order to create these secondary treatment facilities that are needed.

As a result, it hurt our fledgling tourism industry which was just working with UDAG's and other things. We just opened our old railroad station as a Hilton Hotel. We got a boiler order, advisory order on our water from the State department of environmental resources, and we have done other things with UDAG's creating a ski slope in the city limits with a 1,000-foot vertical drop. That was done in order to bring tourists to the community, but a contaminated water supply, a boiler order does all to undermine those efforts, and even those Federal funds have been expended, because of that suburban communities are not having the resources to meet what we need.

In our case, for example, this is a private utility and it is not municipally owned water supply; we have 28 reservoirs, only two of which are filtered. So all of those reservoirs are in surrounding bedroom communities, even though they service the metropolitan area, and while we have complied with the mandates, the suburban areas have not, and yet our water supply is in jeopardy. I think that is a typical example of how we all agree there needs to be a Federal broad-based mandate, but we also understood the local communities just do not have the resources to meet those mandates without the help of the Federal Government.

On that basis, I commend you, your bill and commend you on the foresight that it takes, the overview that it takes to understand that many of our cities are subject to influences from the surrounding areas and those surrounding areas have a much smaller tax base, much less resources in order to meet the needs of those metropolitan areas.

Other environmental regulations and laws have also been burdensome to the cities and, in addition, there have been many Federal mandates imposed on city school systems and educational programs. While the Conference of Mayors supports these mandates, there have been few Federal funds forthcoming to help attain the Federal objectives. Housing requirements, too, impose direct costs to the cities at a time when assistance housing has been cut by 35 percent in the past 5 years.

Mr. Chairman, while I recognize your bill would not reimburse State and local governments for the indirect costs they incur as a result of the Federal regulations, these costs are very large, and I believe further analysis of these burdens and some compensation are warranted.

The Conference of Mayors would like to compliment you on your legislation and offer you our support for the intent of the basic outlines of your bill, S. 483, because it represents an important step in the right direction and recognizes the costs imposed as a result of the Federal legislation and the regulation and need for some reimbursement for the most onerous of these requirements and the

need for bureaucratic incentives to reduce and alter these requirements.

Mr. Chairman, we would like to thank you for the opportunity to testify today and again, the Conference looks forward to working with you and this committee to continue to fashion this urgently needed legislation.

Senator DURENBERGER. Thank you very much, Mr. McNulty.

Mr. Cooke.

Mr. COOKE. Good morning, Mr. Chairman. I am Wilce Cooke, mayor of Benton Harbor, MI. I am testifying on behalf of the National League of Cities which represents 15,000 cities through direct membership in 49 affiliated State municipal leagues.

I am here today to discuss the problems of mandates which are beyond our control.

Mr. Chairman, we have prepared testimony for the record, but I have a condensed copy here, and I would like to read it and highlight it, with your permission.

Senator DURENBERGER. Your full testimony will be made part of the record. We appreciate it very much.

Mr. COOKE. Congress has never fully acknowledged the extent to which costs and burdens are imposed on cities by the enactment of Federal laws or the establishment or termination of Federal programs. Instead, most Federal laws and programs are based on a determination by Congress of the national interest with little regard for the effects on cities.

As a result, a complex web of programs and laws have been established over the years on the basis of a loosely defined concept of the national interest. In fact, these laws and programs affect cities in innumerable ways and have effectively mandated many actions by cities. In many ways, this unstructured approach to the establishment of national policy has made the job of running a city extraordinarily difficult.

The time has come for a re-examination of the effect on cities of this hit-or-miss approach to national policy and for a recognition by Congress of its responsibility to provide support for the implementation of national policy at the local levels. City government does not operate in a vacuum. It is affected in countless ways by legal mandates established by the Federal courts and Congress and human mandates caused by social and economic conditions which are generally attributable to national economic trends.

As city officials, we grapple with these mandates on a daily basis and fashion responses to them without much help from the Federal Government. In most cases, cities cannot ignore these mandates. They are a matter of law or a result of basic human needs.

### LEGAL MANDATES

Legal mandates established by Congress or the Federal courts affect a wide range of city activities. They are generally the result of a determination by Congress that certain objectives are in the national interest. In many cases, however, they are a result of court interpretations of Federal laws that result in the establishment of legal rights and duties which were not clearly contemplated by Congress. In very few cases has Congress intervened to re-

verse a decision by the courts establishing a legal mandate which clearly went beyond congressional intent. As a result, these legal mandates are subject to a constant change by the courts, making the operation of a city very difficult.

In many cases, the public policy objectives of these Federal laws, for example civil rights laws, environmental laws, represent laudable objectives which the National League of Cities supports.

The time has come, however, for Congress to recognize the costs and administrative burdens these laws impose on cities and to consider more cost-effective approaches and/or provide adequate financial support for complying with these laws.

The documentation of legal mandates is not a simple task. The intergovernmental system which has developed over the years has become extraordinarily complex. These mandates take many forms, including the direct imposition of financial obligations on cities and direct intervention in the governmental decisionmaking process.

In some cases, they limit the city's regulatory authority; in other cases, they require the city to provide certain public services. Areas which have been significantly affected by legal mandates in recent years include city employment practices, the governmental decisionmaking process and environmental protection.

Legal mandates in the employment area include:

The Age Discrimination in Employment Act which affects the permissible retirement age for public safety personnel;

Title VII of the Civil Rights Act of 1964 which is being used to implement the comparable worth doctrine and to establish minority hiring commitments;

Effective mandatory participation as of 1983 for States and localities in the Social Security system;

Mandatory participation as of 1976 in the Federal unemployment compensation system;

Treatment of emergency use vehicles taken home by public safety personnel as taxable fringe benefits as of 1985;

And extension of the Fair Labor Standards Act, including its overtime provisions, by court ruling as of February 19, 1985, to firefighters and police officers.

Legal mandates which interfere with the basic governmental decisionmaking process of cities include:

The Civil Rights Act of 1971 which has been used, for example, by prisoners to obtain changes in jail conditions, by students to challenge the rules and procedures of public schools, employees to change the employment practices of States and localities, tenants to prevent eviction from public housing, welfare recipients to change State and local welfare practices and mental patients to obtain changes in the conditions of public institutions;

The Civil Rights of Institutionalized Persons Act which is being used by the Department of Justice to establish patient-physician ratios in mental institutions and to seek changes in jail conditions, such as the construction of new jails;

And the Federal antitrust laws which are used to challenge basic governmental activities, such as zoning franchising and licensing;

And the Communications Act of 1934 which is being used by the Federal Communications Commission to preempt local cable television regulation, the regulation of satellite master antenna televi-

sion systems and zoning ordinances which apply to satellite earth stations.

Environmental mandates include:

The 1984 amendments to the Resource Conservation and Recovery Act, expected to impose compliance costs of $10 billion to $20 billion per year, which affect the operation of municipal dump sites and the provision of trash hauling services;

And the Federal Water Pollution Control Act which will require funding of about $108.9 billion through the year 2000 in order to meet municipal sewage treatment needs.

There are also human mandates. As is readily apparent, the already complex job of operating a city has become even more difficult as a result of the legal obligations imposed on cities by Congress and the Federal courts. While the cost of complying with these mandates is difficult to determine, it is even more difficult to quantify the cost of meeting the obligations of cities to the low-income residents of our communities—the "human mandates" imposed on cities as a result of the diminishing role of the Federal Government in providing a "safety net" for the truly needy.

To determine the cost of meeting these obligations would require the quantification of a number of variables which are beyond the control of city government. While the cost of these human mandates is difficult to determine, it is not difficult to measure the human misery which results from the failure of government to address these very real human needs.

Some of the major human mandates are:

The medical indigency problem which now affects an estimated 20 million to 25 million Americans, including 8 million children.

And I would like to highlight that one, Mr. Chairman. I am mayor of a city, but I am also a nurse, and I work in the emergency room of my city, and I see individuals who have problems who are indigent who have no place to live, who are homeless and who are hungary. We try to deal with this on a local level, but it depletes local resources to the extent if we had the ability, we would have to go out and impose or assess an additional tax on our residents, and that is almost impossible in most of the cities in Michigan where I am from because there is a ceiling or cap on what the municipalities may tax their property owners in our communities.

The high rate of infant mortality, nearly 40,000 American infants die each year in the first year of their lives, and I also have first-hand information on that also in dealing with my profession as a nurse.

The growing problem of hunger in America's cities:

The increase in the number of homeless which now includes families with children, and the increase in the national rate of poverty which now affects about 25 percent of the Nation's children, and I also deal with that. I have first-hand information on that, and I work in the county in the Health Department and very involved in those, and I see a number of individuals, even before I became the mayor of my community. The county had tried to tackle and grapple with that problem, but with Federal mandates and Federal programs, State programs it is very difficult because the funds are not available.

If I can only go back to Michigan again and cite examples from Michigan again where we are one of the hardest hit States in the union as far as unemployment, and I think individuals receive some form of aid from the State government. It is a burden on the State also and municipalities.

In conclusion, the cost of the Nation's cities of complying with legal and human mandates is immeasurable. The problems which the mandates have caused for cities are as real as the problems caused by the burgeoning Federal deficit. Congress must recognize the interdependent nature of the intergovernmental system and the importance of continued Federal support for local efforts to cope with problems which are national in scope.

The legal mandates which have been imposed on local governments by Congress and the Federal courts are generally based national public policy objectives established by Congress, many of which the National League of Cities strongly supports. However, some Federal assistance is necessary to ensure that cities have the financial resources to comply with these mandates.

Almost all the legal mandates which we have described today are not imposed on cities as grant conditions; rather, they apply to cities whether or not they receive Federal assistance. Moreover, they apply, to some degree, to every city in the Nation. Certainly, the General Revenue Sharing Program should be maintained in order to ensure that all cities have some Federal assistance in meeting these national goals.

Similarly, the human mandates resulting from medical indigency, poverty, homelessness, hunger and infant mortality, are problems which are national in scope. They are no longer cyclical problems which can be corrected by improvements in the overall health of the economy, but rather have become structural problems.

When basic human needs are not being met, the low income do not call the Department of Health and Human Services. They do not call the Department of Housing and Urban Development. They do not call the Governor. They dial 911. As Roland Luedtke, chair of the National League of Cities' Human Development Committee, likes to say, "We mayors are in the nose-punching range."

I would also like to amplify on this, Mr. Chairman. At the local level, the citizens do not call the Governor; they could not call the State government; they call the local officials. They attend our commission meetings and voice their opinions or demonstrate or they do whatever is necessary to get the attention of local officials and not State or Federal officials. We are in direct contact with those individuals. We have first-hand knowledge. We are the first tier that they will approach in order to correct the ills of poverty, homelessness, whatever, to try to improve their conditions.

Therefore, it would behoove, I think, the Federal Government, as we have talked with the State government, that any mandated programs that come down from the Federal Government, those programs should be financed by the government imposing or passing the mandates. We have some on our State level also.

In the State of Michigan, we have municipalities, we have been in direct conversation with our State government trying as a joint venture, as a family, as a marriage, per se, trying to eliminate,

55-065 O - 86 - 2

trying to have the Federal Government finance the mandated programs they would pass on to municipalities.

Thank you, Mr. Chairman, for your time.

Senator DURENBERGER. Senator Paul Violette, representing the National Conference of State Legislatures.

Mr. VIOLETTE. I want to thank you for the opportunity to testify on S. 483, the Intergovernmental Regulatory Relief Acts of 1985. As the majority leader of the Maine State Senate and vice chairman of the National Conference of State Legislatures' Committee on Government Operations and Regulations, I am extremely encouraged by the legislation since it proposes several key policy changes which would strengthen intergovernmental rulemaking and retentions.

Like many of the group represented here, NCSL has had regulatory reform as one of its major agenda items for many years. Without any visible decline in the number and effect of Federal regulatory programs, it is likely that regulatory reform will continue to hold a position of priority concern.

While regulatory reform covers a broad span of processes and procedure-related areas, that portion involving intergovernmental relations, stands out prominently. S. 483 addresses either directly or indirectly several issues which NCSL believes require resolution so that the entire intergovernmental structure can function more productively.

First, while NCSL has never specifically recommended either full or selective reimbursements for the funding of intergovernmental regulations when a national purpose is at stake, the organization has urged the Federal Government to, first, consider likely costs imposed by its regulations; second, establish a process for reviewing existing regulations for a negative impact on States and local governments and; third, discontinue the imposition of program mandates which are underfunded.

S. 483 would seem to address at least in part these three major concerns through the development of an annual Presidential report on economic, noneconomic, and direct costs experienced by State and local governments. This report could place all executive agencies and Congress on annual notice as to the new or continuing costs attributable to individual intergovernmental relations.

The report to be completed by the President would serve to address NCSL's concern that the Federal Government review regulations for their potential negative impacts on State and local governments. While the organization's policy deals with much more than costs, the report could well consider the potential for reducing costs through performance and efficiency standards as well as through administrative flexibility.

States have too often been either surprised by shifts in Federal regulatory policy or unaware of just how much money and manpower they must provide to maintain compliance with Federal directives.

I recall in 1983 that the Maine Legislature had to find $315,000 in additional State revenues and 24 new employees to avoid the loss of AFDC and Food Stamp funds. The amount might appear minor here in Washington, but $315,000 represents a significant amount of money in Maine's annual budget.

The threatened loss, however, did not stem from legislative oversight or opposition. Rather, it originated from a regulatory mandated change in the frequency of gathering personal data on receipts from a quarterly to monthly basis.

A second area on which I would like to comment is on the prescription for Federal courts and Federal agencies and the rule for full or proportional payment for additional costs of intergovernmental relations. While NCSL policy, as I mentioned earlier, does not address any reimbursement payment method, the organization would not want to be placed in a position of supporting a validation of a rule which might otherwise be invalid under the statute it was purportedly implementing.

While this might not occur with S. 483, it might be worthwhile to add language to ensure the State and local rights to challenge Federal rules are not preempted by Federal reimbursements for costs of intergovernmental relations.

My third point, and one which this bill's author has pointed out in their legislative declaration is that Federal regulation of State and local governments has become increasingly obtrusive and extensive. While I personally felt that the block grants, for example, might lead to an error of intervention, it seems as if we have become even more preoccupied with a web of regulatory entanglements. Like many State legislators, I gradually achieved greater understanding and familiarity with Federal programs and their objectives. That is good news to me, but the bad news is that I am constantly staggered by the parade of State agency heads who come before the Senate with requests for increased appropriations, some or all of which are attributable to Federal regulations and policies.

As Senate majority leader, only this year I am sponsoring legislation which will once again supplement the administrative budget for the Community Development Block Grant Program. In 1982, the State of Maine had to take additional funds out of its general operating account to supplement the administrative block of the CDBG block grant program. We will have to augment that appropriation once again this year. While I do not expect this to stop, I do feel that S. 483 might foster a healthier attitude toward the precise need for Federal regulations when identifiable national objectives are on the table.

NCSL has long called for Federal agencies to conduct regular analysis of proposed and existing rules. S. 483 does not directly mandate such a review, but it does set up a reporting process which could possibly lead to improved intergovernmental rulemaking process. I would suggest to you that language mandating agency review of regulations proposed or in effect for cost/benefit analysis purposes and for engaging a preemptive impact on State laws be added to S. 483.

I have attempted with NCSL and other legislative staff assistance to thoroughly review the legislation under consideration today. I have attached a more technical analysis of S. 483 accompanied with several recommendations for your review.

Speaking relatively to Maine and our municipalities and the Federal Government and State government, Maine some years ago passed legislation which mandates that any legislation it passes or

any rules or regulations that are promulgated that a fiscal note must be attached to that legislation identifying the costs to whatever particular level of government and also requiring the fiscal notes that level of government have to pay for whatever rules or regulations or new legislation that passes which goes down to the local country level.

Mr. Chairman, I repeat, I am very pleased you have not only introduced S. 483, but have now commenced public hearings on it. Your objectives very much address NCSL's concerns and, to that extent, the organization has urged me to speak in support of it. Thank you.

Senator DURENBERGER. I want you to try to help me with what it is we have to accomplish with this bill. Can each of you sort out what it is we ought to pay for?

There are several ways we can look at that. I haven't thought out all the examples, although Mr. Cooke, in your testimony you had a lot of examples I couldn't keep up with as you were going through this list of things we deem to be national purpose. One thing that has always bothered me is whether we ought to pay to get you to do something or we ought to pay because we want to tell you how to do it. It may well be that there was a time before we got into a lot of lines of business that you were already in at the State and local level, that if you had had the resources to handle some of these problems yourself, there never would have been a Federal program.

One of the reasons we have cooperative federalism is that the local government in particular was highly dependent on property taxes. As wealth in this country started to shift away from property and on to income, the local government didn't have any way to get at it because the States and Federal Government grabbed that as a source, and as the property tax got higher, the folks moved out of Scranton and created those little suburbs. They didn't take the problems with them; they just took the income with them.

So the State of Pennsylvania was able to tax these people at a low cost to government in the suburbs and created programs to tell you in Scranton what you oguht to do that you probably would have done if those folks had stayed there or if the State of Pennsylvania had given you the authority to tax income.

So in all of this, it seems to me it goes beyond just saying you want the Federal Government to do it, you ought to pay for it because the reality is the degree that State and local government pay for it, you probably get more for your money than we do.

Is it a greater problem when we start telling you how to do it, you have to have *x* number of hearings, you have to have 70 pieces of paper with every application, you have to do what the Senator was talking about in terms of the CDBG, is that the large part of the problem or is it something else like Mayor Cooke was talking about, the fact we are not putting adequate money into the poor and adequate money into AFDC and Medicaid, medical assistance and a variety of those services? Can you help me just a little bit, each of you, with where the shoe pinches you the most in terms of Federal payment for Federal obligations? I guess we can start with Mayor McNulty first.

Mr. McNULTY. Well, Mr. Chairman, I think there are a number of ways to answer that. Let me take the first thrust. And that is, it is not just the mandating of capital investments, although I refer to them in my testimony, it is the actual operation from then on that becomes a very real burden on the local community.

We have just had proposed from our Scranton Sewer Authority a 15-percent rate hike increase because the industrial users have utilized the high technology and are able to recycle their wastewater whereas the homeowner isn't. So while they have a larger bill, therefore, have the more resources to be able to meet the operating needs, the operating burden becomes larger for the homeowner, which is the property owner which is back to the same taxpayer.

Senator DURENBERGER. But wouldn't you have cleaned up your water supply anyway?

Mr. McNULTY. Your initial statement about our ability to do it, with the ability to do it we were more than willing to do it and were doing it. We were ahead of the rest of the communities as to the stage of our treatment and tertiary treatment, not just secondary mandate. As you said, the out-migration of people and out-migration of resources and those who have become more affluent and fled the communities, Scranton is not atypical there. That is exactly what happened. And we lost our ability to gain that revenue, which is why revenue sharing, and Mayor Cooke alluded to it, becomes so important to us.

In Pennsylvania, as in Michigan, I believe, we both have compulsory arbitration laws for our police and firemen mandated by the State legislature. We wound up with our revenue-sharing money going to pay for our police and fire personnel, and that is an area where I think the Federal Government is recognizing that there is a major problem in this country with drugs and other things, but I think it is an area where the local government is best equipped to handle the money going to directly the salaries for police and fire and no middleman, no bureaucracy. It is going directly to the payroll of funding those things. That is an example of what the thrust of this legislation is already doing directly on the streets of Scranton, San Francisco, New York, or other places.

I think when we look at this legislation, I think what I am saying on behalf of the Conference of Mayors is that we have a joint obligation here. We recognize that just cleaning up Scranton doesn't clean up the world and that what influences are around us and surround us can undo whatever we have done.

So we do need to recognize the need for State and Federal mandates, but we do recognize the need for those resources that can be better levied on a State and National level and are preempted from us because of State and National legislation for that revenue to come back to us in some form so we can address it directly.

But I think the other point you were making on the bureaucracy and on the how-to-do-it, I don't believe that there is such a depository of knowledge in the District of Columbia or in the regional offices, most of whom in the Federal Government have different sets of rules for different sets of regions that we can necessarily follow those rules.

I have had an example with the Community Development Block Grant Program where one thing was done in Jersey City with the

same contractor couldn't be done in the city of Scranton because there was a different regional office and they had a different interpretation of the regulation.

So I think while we have an interest here in getting the revenue, we are also interested in working a partnership on those rules and regulations. So if we are on the local level, we can at least put some input into that.

Senator DURENBERGER. That is helpful and, Mayor Cooke, I ask you now—appreciate my problem. I am trying to figure out what it is you think I ought to pay for that I am not paying for now. In the first two witnesses you saw a difference of opinion about what this burden is that we are adding. I sit here and I can hear you because I know something about health care; I can hear you when you talk about the fact that health is a national problem, not only a national problem but there is a national responsibility. When you say we can't raise the money in Michigan to pay for the indigent, I say, well, in Scranton, PA, they must have raised the money somehow to build a 1,000-foot vertical ski slope, why should the Federal Government commit resources because somebody decides ski slopes are more important than poor people?

Is that the issue we are getting at, or is it mainly that when we go into the ski slope business, we tell you how to build ski slopes and you have to do it our way or when we go into the business of Medicaid, AFDC, food stamps, and so forth, we tell you that in order to get AFDC, only these few kinds of people can qualify and if they find a job, then they get disqualified for this, this, this and this, and you say, "Hey, that isn't a practical way to go about it, but we will do it your way if you will give us the money to accomplish it."

Mr. COOKE. I think, Mr. Chairman, that is part of the problem. If the Federal Government gives us money for WIC programs or AFDC and only certain individuals qualify, that is fine and good, and when we work with those individuals and get them gainfully employed and they make a little money, then cut them off, that is another problem.

We are talking about two different things here. Maybe we should carry them a little longer because they will stop working because they have been cut back again. If the Federal Government mandates certain rules and regulations, certain laws for municipalities, and if we have to promulgate those, if they tell us what to do and what we must do and is above and beyond what we are already doing for the individuals as to add a burden on our city coffers, when the State government, Federal Government should be responsible for paying for it. Again, I would like to cite the example in Michigan, we can't raise property taxes——

Senator DURENBERGER [interposing]. You have a levy limitation.

Mr. COOKE. We can't go above that, but the court system can levy additional money and go above that if they so desire. Again, that is the problem of mandating. If they can do it, maybe they should look at the possibility of having municipalities doing the same thing if it is going to get us out of our problems or financial difficulties that we have.

Senator DURENBERGER. Senator? You are right in the middle.

Mr. VIOLETTE. Mr. Chairman, I think that our concern is that if the Federal Government is going to cite some national policy that it needs to implement and by that virtue it gains the right to establish a national policy in the system of government that we have that it, in fact, assumes a responsibility for sharing the burden with other levels of government in implementing that policy, whether that be by funding directly or in the regulatory process the additional funds that are placed on other various levels of government.

The problem to some extent is that, in fact, the regulations are overregulated. There is not enough flexibility in allowing for the needs of particular States, as in the States we have to make allowances, for particular individual communities.

The needs of Maine are very different from those of Rhode Island or California or some other State. There are very few Federal programs in Maine where the limit on the administrative costs is not being exceeded, and because of that, the State does not, in fact, have to pick up additional costs because the administrative cap is too low. It is a rural State, sparsely populated.

I am just using that as an example to illustrate if the Federal Government is going to regulate at that level, then it has a responsibility to assist in paying for that regulation. On the other hand, if it is going to decide that it is not going to commit itself with its own resources, then if it is going to establish a national policy, it should be extremely general and broad rather than being particularly specific.

I think that is the difference. If you are going to be broad and allow the States or other levels of government, in general, to pretty much do as they see fit, then OK. But the other issue is if you are going to be very specific, if you are going to be very restrictive, then you have incurred a responsibility by your own actions to providing for the bulk of the cost of running such programs.

Senator DURENBERGER. Maybe I ought to get an evaluation from you, and I think, Senator, you made some reference to the changes in block grants. My impression is that people at the State and local level prefer money without strings so that to the degree that we have block categories for block programs and relieve the recipients of some of the mandates, we have created a grateful constituency if, in effect, that happened in title 20 or some of the other titles.

But, on the other hand, when you look at it out here from a budgetary standpoint, it looks to me like when we get around to reducing the deficit by cutting spending, places Congress is most likely to start are areas like general revenue sharing. It wasn't mandated to do anything but return money as inexpensively as possible to local government, so some perceive it as a good one to get rid of. No one looks beyond that to see what good is accomplished. They say, "that doesn't have a statutory good, therefore, we can get rid of it."

Then one can go to the more effective blocks from the standpoint of not having mandates and say, there are no mandates, no Federal purpose, therefore, they are not supposed to accomplish anything specific, other than help women and children, and some might suggest that we could get rid of that area.

Eventually we will cut this process back to the environment and a few other things where the money goes into a tertiary treatment plant or the money goes into a very specific thing, and if the money isn't there, the plant will never be built.

We have a bit of a quandry here—the more we loosen up, the more it looks like these programs become eligible for elimination on the theory that you all would do them anyway. Does that strike fear in anybody's heart that we might start with general revenue sharing, get rid of that; start into some of the others and get rid of that?

Mr. COOKE. If we talk about elimination of revenue sharing, that will be a travesty to municipalities throughout this country, because most municipalities use revenue sharing to complement their police and fire, their public safety department. That is a service as a municipality we are obligated to provide certain services to our constituents, residence. One is police, fire, and public works.

Funds of that sort we use to do just that. If those funds are cut, then we have to drastically cut back on our employees and reduce services to the individuals. Then we open another can of worms and have more problems and create more and more problems. That may be a cyclical problem. The whole thing is cyclical. We are opening Pandora's box and do a disservice to America, period.

As far as mandates, we feel there should be some mandate now. We don't feel we should do whatever the municipalities want to do. There have to be guidelines, but they should not be so stringent that we cannot function, and when we suffer, then the whole country suffers. That is not what we are asking. You must impose some.

Senator DURENBERGER. Senator, do you have a different view on it?

Mr. VIOLETTE. You made reference to the CDBG. I happen to have been a member of the CDBG Advisory Board in Maine since its inception. The NCSL is in support of the concept of block grants in general even though when the block grants came to the States, the aggregate of what went into the block grant is less than what it started with. We accepted that on the premise that they would allow us more flexibility in addressing those areas that were of the greatest concern to our particular States and our particular regions.

What has happened, quite frankly, Mr. Chairman, is that the level of regulations, and I am speaking with respect to the CDBG Program, has literally doubled or tripled within the year itself from housing—I believe it is housing CDBG falls under, the level of new rules being promulgated in that area alone forcing the State of Maine to promulgate a vast array of new planning guides and the like with the same level of funding available for administative costs.

Now, that to me is a very good example of exactly what is happening in the six new large grant programs that were established, and I think it is only one example. Although I believe the broad grant programs are, in fact, the way to go, Mr. Chairman, aside from what may be some concerns about their life politically, it seems as if within the bureaucracy there is always that return to once you have something, it is nice and clean and everything, it seems to be working well, darn it, we have to start doing something

over here. so we have to start telling them they have to do this and they have to do that. That just means more money we all have to spend on not achieving the results of what the program was designed for and then that, in fact, causes more problems here in Washington because then there are those people who will say, look, they are just not doing what they are supposed to and that is obviously of concern to all of us.

Senator DURENBERGER. Mayor McNulty.

Mr. MCNULTY. In defense of the ski slope [laughter] I want to give you an example of what that has meant to our community. The thousands of tourists that have come opened up new small businesses and were using UDAG's for the hotel and for the ski slope. And for the first time since the Depression, Scranton is now below the national average in unemployment. If I understand the way this Government works, you are getting more of that money from those people that are working than I am. And so is the State government.

So I think what we are doing is trying to be creative on the local level to bring people back to communities like mine, to generate jobs which is indeed helping the Federal deficit by creating employment in the private sector. And I think part of the problem that I have with the regulations that take effect, especially the Community Development Block Grant Program, I thought the thrust of the administration was for economic development. We have been trying to do that with our Community Development Block Grant Program. We took Steamtown, USA, which is a large railroad museum, and placed it right down in our community as an adjunct to the tourist attractions.

We were allowed to buy the Conrail yards and return those for the museum, but we couldn't buy the track to run the train on. So without the track, we had no train, we had no museum and that was for the economic development, and we spun off at least 2,000 jobs out of that, but those 2,000 jobs couldn't be counted because they were in the private sector and the Federal regulation from HUD wouldn't let us count those as having an impact on our community.

Senator DURENBERGER. Is there anything that any of you can tell us about the creativity of State government and its mandates on local government? Is there something we can learn from the way Michigan or Pennsylvania or Maine is handling the State mandates?

Mr. MCNULTY. I want to get the Senator's remarks, and I am going to send them to all the members of my legislature. I think his testimony here is what our testimony has been as to State mandates, too, in Pennsylvania, especially on compulsory arbitration. The ability to pay is not a factor in compulsory arbitration boards. Both Michigan and Pennsylvania have that compulsory law. Maine doesn't and I think the State of Maine ought to keep it that way from a local government's point of view.

That is just an example of between the State—we are the last act; we are the bottom line literally and everything dumps down. We catch it all. I think that we need to know that there is going to be a cooperative effort and not just the Federal Government deciding defense is the only place it is going to be, foreign policy is the

only place it is going to be or monetary system is the only place it is going to be because we all have a responsibility to the same citizenry. It is their money to begin with.

Mr. COOKE. In defense of Community Development Block Grants, and Urban Development Action Grants, I believe those funds have played a tremendous—it has given the cities tremendous leverage in trying to revitalize themselves, entice business and industries back into the communities.

I have to agree with the Senator, some of the rules may be a little stringent, and if we had more flexibility, we would be able to entice more business and industry into our areas. They are the key, I think, to revitalization of urban areas in our country.

Senator DURENBERGER. Senator, a last word?

Mr. VIOLETTE. Just briefly, it is not really getting away from the subject, but last year in Maine, we believe—we practice what we preach here. Last year in Maine, we doubled the amount—we have revenue sharing in Maine from the State level to the local level. It is a percentage of our general fund which is made up primarily of the income tax, the sales tax, corporate tax, and a number of other taxes. The only dedicated accounts is fisheries and wildlife and transportation. Half of the money coming into Maine from taxes goes to the general account, and a percentage of that money must go into the revenue sharing account which is then disbursed to the municipalities.

Last year, we doubled that amount of money. We did not raise taxes. We simply felt it was important. We happened to believe in the concept and the money just goes to the towns. The only thing that says on the annual town report is this is the amount of money we received, and they do with it what they want. So we happen to believe in that kind of concept in Maine and I think the program works well and it is our commitment to another level of government that we share in relationship with. I think it would behoove the Federal Government to continue sharing in that same relationship at that program level. So really that is all I have to say, Mr. Chairman.

Mr. MCNULTY. As Maine goes, so goes the Nation, hopefully. [Laughter.]

[The prepared statements of Messrs. McNulty, Cooke (with an attachment), and Violette (with an attachment) follow:]

STATEMENT BY JAMES B. MCNULTY, MAYOR OF SCRANTON, PA, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS

Mr. Chairman, Members of the Governmental Affairs Committee, the U.S. Conference of Mayors appreciates the opportunity to comment on federal mandates and in particular on S. 483, "The Intergovernmental Regulatory Relief Act of 1985."

As you know, many cities across the country have encountered numerous problems and substantial costs as a result of federal mandates. New York City alone recently estimated that they incurred $6.5 billion in additional direct costs in FY83 as a result of federal and state mandates. Cities across the country, including my own, have confronted similar problems, though on a smaller financial scale. However, the total costs across the country as a result of federal mandates are truly staggering.

In the past decade, the federal government has imposed many legislative and regulatory restrictions, which have been very costly for cities. The Conference of Mayors does not oppose these mandates, believing many are justifiable from the federal perspective. We do believe, however, that the federal government should reimburse states and cities for the increased costs associated with these mandates. The opposite situation has prevailed in recent years with housing, wastewater treatment

grants, transportation, education and various social and community service programs suffering sharp reductions.

I would like to cite a few examples of some of the costly mandates which have been imposed on state and local governments.

First, there has been much environmental legislation in recent years affecting local government's budgets and costs. The Clean Water Act requires all new wastewater treatment plants to be at secondary treatment capacity. For new plant planning and construction, the federal government provides 75 percent of the costs, but the cities are forced to pay all operating and maintenance costs. Moreover, although the Environmental Protection Administration can waive on a case-by-case basis the requirement that plants be at secondary treatment capacity, few waivers have been granted. The result has been substantial financial burdens, costs which will rise for cities with any discontinuation of federal support for new construction, as has been proposed in the FY86 budget.

Other environmental regulations and laws have also been burdensome for cities. For example, federal law requires that local water pollution control plants operate at maximum efficiency, meet certain hygiene standards and maintain staff at designted levels. Recently, beginning in FY82, all ocean dumping of sludge was prohibited by the federal government, which required many cities to build appropriate composting plants and other facilities. Under Clean Air Act guidelines, many cities have had to upgrade and rehabilitate their incinerator processes. The types of construction required by all of these environmental mandates have not been cheap.

In addition, there have been many federal mandates imposed on city school systems and education programs. These include federal laws requiring that handicapped children receive the same educational opportunities as other children and that diagnostic and evaluative support services be provided for public school children with physical or mental handicaps. While the Conference of Mayors supports these mandates, there have been few federal funds forthcoming to help support the attainment of these federal objectives.

Housing requirements, too, impose direct costs on cities—at a time when assisted housing programs have been cut by over 30 percent in the past five years. For example, cities must provide adequate police protection for federally-assisted public housing projects with little or no operating assistance to pay for these costs. And cities are required to provide termination hearings for each tenant evicted from assisted housing on grounds other than non-payment of rent, another mandate requiring local government expenditure.

Finally, too, there are various social service requirements imposed on localities. One example is that the federal government requires cities to provide child support services—to locate absent parents, determine liability for support and enforce child support obligations. While there is partial federal support for AFDC recipients, there is no support for other population served.

These are just a few of the examples of direct city costs which have resulted from the imposition of federal mandates on state and local governments. I know that many individual cities, states, and counties have their own lists.

Mr. Chairman, while I recognize your bill would not reimburse state and local governments for the indirect costs they incur as the result of federal legislation and regulations, these costs are very large and I believe further analysis of these burdens and some compensation are warranted. For example, the flood of refugees into this country from Latin America, Southeast Asia, Cuba and Haiti has placed enormous burdens on city programs, since many of these refugees have settled in the largest cities. Similarly, tax laws have had a severely negative indirect effect on state and local governments, increasing their interest and borrowing costs, lowering their tax bases and tax receipts and otherwise adversely affecting cities. Yet, many of these effects are indirect and would not be reimbursed or appropriately reduced under your legislation.

Mr. Chairman, I do not want to sound overly negative. The Conference of Mayors would like to compliment you on your legislation and offer our support for the intent and basic outlines of your bill. S. 483 represents an important step in the right direction—that of recognizing the costs imposed as the result of federal legislation and regulation, the need for some reimbursement for the most onerous of these requirements and the need for bureaucratic incentives to reduce or alter these requirements.

I know you do not want specific comments on S. 483 at this hearing, but I would like to make two very general comments. First, I am concerned about protecting a few federal laws and requirements from possible emasculation, such as civil rights protections, handicapped protections and the like. Reimbursement for these mandates may be the more sensible option, rather than change. Second, I have basic

misgivings about giving the states all federal funds under this legislation, even with a requirement that they pass through a portion of the funds to local governments. The experience of many cities with their states on pass through requirements under other programs has not been positive. I would be concerned that the states will be able to "doctor" the figures so as to retain the vast majority of funds under the reimbursement provisions.

Mr. Chairman, thank you for this opportunity to testify today in support of your legislation and to outline our concerns about the non-reimbursed costs associated with federal mandates. As you know, local resources and dollars are finite. When resources are allocated to follow federal dictates, they are diverted from locally identified needs and priorities. Federal requirements are particularly burdensome in view of the fact that many local and state governments are reeling under the effects of depressed tax revenues, high unemployment, tax and expenditure limitations, federal and state aid cutbacks and growing human needs. It is difficult to cut back on budgets or adequately meet the needs of our low-income citizens when many expenditures are mandated by federal law.

The Conference of Mayors looks forward to working with you and this committee as you continue to fashion this important and urgently-needed legislation. Again, Mr. Chairman, we commend you for your introduction of S. 483, which shows great sympathy for the regulatory plight of state and local governments.

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Statement of

MR. WILCE COOKE

MAYOR, BENTON HARBOR, MICHIGAN

on behalf of

THE NATIONAL LEAGUE OF CITIES

on

FEDERAL MANDATES

before the

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

April 2, 1985

Good Morning, Mr. Chairman and Members of the Subcommittee. I am Wilce Cooke, Mayor of Benton Harbor, Michigan. I am testifying on behalf of the National League of Cities which represents 15,000 cities through direct membership and membership in 49 affiliated state municipal leagues. I am here today to discuss the problems of governing a city at a time when many of our costs are determined by mandates which are beyond our control.

Congress has never fully acknowledged the extent to which costs and burdens are imposed on cities by the enactment of federal laws or the establishment or termination of federal programs. Instead, most federal laws and programs are based on a determination by Congress of the national interest with little regard for the proper role of cities. As a result, a complex web of programs and laws has been established over the years on the basis of a loosely defined concept of the national interest. In fact, these laws and programs affect cities in innumerable ways and have effectively mandated many actions by cities. In many ways, this unstructured approach to the establishment of national policy has made the job of running a city extraordinarily difficult.

The time has come for a reexamination of the effects on cities of this "hit or miss" approach to national policy and for a recognition by Congress of its responsibility to provide support for the implementation of national policy at the local level. City government does not operate in a vacuum. It is affected in countless ways by legal mandates established by the federal courts and Congress and human mandates caused by social and economic conditions which are generally attributable to national economic trends. As city officials, we grapple with these mandates on a daily basis and fashion responses to them without much help from the Federal Government. In most cases, cities cannot ignore these mandates: they are a matter of law or a result of basic human needs. Consequently, basic governmental actions are dictated, to a large extent, by these mandates.

LEGAL MANDATES

Legal mandates established by Congress or the federal courts affect a wide range of city activities. They are generally a result of a determination by Congress that certain objectives are in the national interest. In many cases, however, they are a result of court interpretations of federal laws that result in the establishment of legal rights and duties which were not clearly contemplated by Congress. In very few cases has Congress

intervened to reverse a decision by the courts establishing a legal mandate which clearly went beyond congressional intent. As a result, these legal mandates are subject to constant change by the courts, making the operation of a city very difficult. In most cases, the public policy objectives of these federal laws (e.g., civil rights laws, environmental laws) represent laudable objectives which the National League of Cities supports. The time has come, however, for Congress to recognize the costs and administrative burdens which these laws impose on cities and to consider more cost effective approaches and/or provide adequate financial support for complying with these laws.

The documentation of legal mandates is not a simple task. The intergovernmental system which has developed over the years has become extraordinarily complex. These mandates take many forms, including the direct imposition of financial obligations on cities and direct intervention in the governmental decision-making process. In some cases, they limit the city's r gulatory authority; in other cases, they require the city to provide certain public services. Areas which have been significantly affected by legal mandates in recent years include city employment practices, the governmental decision-making process, and environmental protection.

Employment Practices

A city's relationship with its employees is governed by various federal laws which restrict the city's authority in many ways. In most cases, these laws were enacted in order to protect the fundamental rights of employees and are based on a determination that certain minimum protections must be provided for employees. However, in many cases, these laws have a disproportionate impact on public sector employers (e.g., comparable worth) or fail to take into account the special needs of city government (e.g., the effect of the overtime provisions of the Fair Labor Standards Act and the Age Discrimination in Employment Act on public safety personnel).

1. Age Discrimination

The Age Discrimination in Employment Act (29 U.S.C. Section 621 et seq.) prohibits age-based discrimination against employees who are between the ages of 40 and 70. In 1974, the ADEA was amended to apply to states and localities; employees of the United States, on the other hand, are not covered by the ADEA. An important exception to the ADEA is section 623(f) which permits the use of age as an employment standard "where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business."

A substantial majority of cities have mandatory early retirement ages for public safety personnel, such as police officers and firefighters. Mandatory early retirement is generally based on safety considerations (i.e., the physically demanding nature of the activities of firefighters and police officers). The Equal Employment Opportunity Commission (EEOC) is the agency which has been authorized to enforce and implement the provisions of the ADEA, including section 623(f) which permits the use of age in cases in which age is a bona fide occupational qualification (BFOQ).

However, EEOC has failed to establish standards for defining the circumstances in which an early retirement age or a maximum hiring age can be established for public safety personnel by a city. Instead, it has brought countless lawsuits against cities and states which have early mandatory retirement ages or maximum hiring ages, challenging those age-related employment conditions as in violation of ADEA. The consequences for cities of the uncertainty resulting from this case-by-case approach are that: (1) the validity of all city retirement ages for public safety personnel has been called into question; (2) the city's obligation to pay retirement benefits is difficult to determine because there are no clearly defined rules governing the

mandatory retirement age for police officers and firefighters; and (3) members of the city's police or fire force, because of age-related physical characteristics, may not have the physical capabilities to respond to emergency situations.

2. Comparable Worth

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment practices on the basis of sex (42 U.S.C. Section 2000e-2). This provision has served as a basis for challenging a wide range of city employment practices, including city compensation and classification practices which affect categories of employees which are primarily made up of women. In some cities, members of female-dominated categories of employees have filed lawsuits claiming the right to pay which is equal to that of members of male-dominated categories of employees whose work involves comparable skill and responsibility.

Although the comparable worth doctrine is an evolving legal doctrine and many of the legal principles remain unsettled, it has already resulted in a finding of liability against the State of Washington for an estimated $500 million to $1 billion in back pay to certain female employees in the American Federation of State, County and Municipal Employees, 578 F.Supp. 846 (W.D.

Wash. 1983) case. As comparable worth or pay equity lawsuits are brought with greater frequency against cities and new state laws are enacted expressly extending the concept of comparable worth to public sector employees, cities will be forced to change many of their long-standing employment practices, including employee classification systems and collective bargaining agreements. Moreover, in some cases, they may be found liable for back pay to large numbers of employees and for damages.

Public sector employers are more vulnerable to pay equity lawsuits because their wage classification systems are public information, unlike those of private sector employers, which are generally proprietary information. Thus, the pay equity concept, which the National League of Cities strongly supports, affects state and local government more than it does the private sector.

3. Discrimination Against Minorities

Title VII prohibits discrimination in employment on the basis of race, color, or national origin (42 U.S.C. Section 2000e-2). Many cities have, either voluntarily or under court order, established Title VII remedial hiring and training plans which are designed to correct past inequities. In some cases, affirmative action obligations and seniority rights are difficult

to reconcile, particularly in cases in which lay-offs are necessary as a result of budgetary problems. In these situations, conflicting federal policies -- prohibitions against discrimination on the basis of race and prohibitions against discrimination on the basis of age -- converge, making the local decision-making process extremely difficult.

4. Social Security

Under a plan enacted by Congress in 1983 to bail out the Social Security system, states and localities are prohibited from terminating social security coverage for their employees on or after March 31, 1983 (42 U.S.C. Section 418(g)). This change in the law was estimated to increase the social security trust fund's revenues by $3.2 billion in the 1983-1989 period. Thus, it is expected to increase social security costs for state and local government by an equal amount during that period. Moreover, it would have the effect of permanently subjecting any state or locality, once it has elected to participate in the social security system, to a permanent tax (i.e., the employer's share of the social security tax), a tax which is expected to increase significantly in the future.

Additionally, the social security tax deposit requirements were accelerated for state and local employers, requiring cities to make tax deposits twice a month beginning in January of 1984 instead of once a month as was the prior requirement (42 U.S.C. Section 418(e)(1)(A)). This change in the law was estimated to increase the social security trust fund's revenues by $2.2 billion in the 1983-1989 period and will increase the costs to states and localities of participating in the social security system by a similar amount.

5. Unemployment Compensation

In 1976, the Federal Unemployment Tax Act (FUTA) was amended to cover employees of state and local government (26 U.S.C. Section 3301 et seq.). This was accomplished by making federal approval of state unemployment compensation plans contingent on the state's provision of unemployment coverage to state and local employees. In effect, the 1976 FUTA amendments required every state to enact legisation by January 1, 1978 providing full unemployment compensation coverage to all state and local employees. In 1976, it was estimated that mandatory FUTA coverage would cost local government $1.2 to 2.0 billion per year.

Under FUTA, a federal payroll tax is levied at a rate of 6 percent on the first $7,000 of each employee's annual income. Additionally, employers are entitled to a tax credit for a portion of state unemployment taxes. The revenues from the federal payroll tax are used to: (1) pay federal and state administrative costs; (2) pay 50 percent of unemployment benefits under the extended benefits program; (3) pay 100 percent of unemployment benefits under the emergency benefits program; and (4) maintain a federal loan program from which a state may borrow funds whenever it does not have the funds in its own trust account to pay unemployment benefits.

The states are responsible for a large portion of the costs of unemployment compensation, including all the costs of the regular benefits program. These unemployment benefit costs are met by individual employers through either the reimbursement method or contributory taxes. Under the reimbursement method, the employer is required to reimburse the state's trust account for any unemployment benefits paid out to the employer's former employees. Cities are frequently unable to utilize the reimbursement method because of the problems involved in attempting to budget in advance for unpredictable reimbursement costs. Thus, in many cases, cities are forced to elect the contributory tax method despite the fact that the rate of

unemployment for city employees may be lower than the rate of unemployment for private sector employees. The effect of this arrangement is that cities, unless the unemployment rate for the city's employees is equal to or greater than that of private sector employees, may, in some cases effectively subsidize a portion of the private sector's unemployment costs.

The states are allowed under FUTA to vary the contributory taxes imposed on various employers according to the employer's unemployment experience rating. However, because state trust funds are often depleted as a result of high unemployment in the private sector, the tax rate, after unemployment experience is taken into account, is often substantially in excess of the cost of a city's unemployment benefits. In fact, in 1983, the states owed about $12 billion to the federal unemployment trust fund as a result of borrowing from the federal fund to cover unanticipated state costs. Thus, even with a variable tax rate, cities may still be effectively subsidizing the unemployment costs of private sector employers.

6. Fringe Benefits

In 1984, a provision was added to the Internal Revenue Code subjecting certain fringe benefits to the federal income tax and requiring witholding by the employer on the basis of the income

attributable to these fringe benefits (26 U.S.C. Sections 132, 3401). This change in the law has caused innumerable problems for public safety personnel, such as firefighters and police officers, who take emergency motor vehicles home and cities which are now subject to unnecessarily complex withholding requirements.

7. Fair Labor Standards Act

In 1974, the Fair Labor Standards Act (FLSA), including its overtime provisions, was amended to apply to state and local employees (29 U.S.C. Section 201 et seq.). For the most part, however, those provisions were not implemented in 1974 for state and local employees because of the Supreme Court's National League of Cities v. Usery, 426 U.S. 833 (1976), decision, exempting traditional city employees from the FLSA. That decision was overruled by the Supreme Court on February 19, 1985 in Garcia v. San Antonio Metropolitan Transportation Authority.

As a result of the Garcia ruling, cities are now subject to 654 pages of complicated regulations established by the Department of Labor (DOL) in conjunction with its enforcement responsibilities under the FLSA. Of particular concern is the impact on cities of the FLSA's overtime provisions for firefighters and police officers. In 1974, the International City Management Association

estimated that the cost of complying with the FLSA was $1 billion per year. As a general rule, the FLSA requires employers to pay wages on a time and a half basis for any hours worked in a week in excess of 40 hours.

The FLSA includes a partial exemption for public safety personnel, permitting work schedules ranging from 53 hours in a seven-day period to 212 hours in a 28-day period for firefighters and work schedules ranging from 43 hours in a seven-day period to 171 hours in a 28-day period for police officers. However, this partial exemption may not be utilized unless the work schedule is properly established in accordance with DOL's regulations. Many cities have collective bargaining agreements establishing work schedules which deviate in minor ways from the schedules permitted under the FLSA's partial exemption provisions. In those cases, the employees would be entitled to overtime compensation on a time and a half basis for hours worked in excess of 40 in a week. Moreover, because the Garcia ruling was unexpected and is apparently effective as of February 19, 1985, its effect is to create an unfunded liability (cities generally do not budget funds for unforeseeable liabilities).

The Governmental Decision-making Process

Many legal mandates have a direct and immediate impact on the exercise of basic governmental authority. For the most part, the cost of these mandates cannot be measured; however, their effect on the city's ability to govern is readily apparent. In almost all cases, these mandates are not a result of a clear expression of intent by Congress. Instead, they have been gradually developed by the courts over the years with little guidance from Congress on the basis of expansive interpretations of federal law.

1. Civil Rights Act of 1871

The Civil Rights Act of 1871 (42 U.S.C. Section 1983) provides that any person, acting under color of state law, is liable for the deprivation of "any rights, privileges, or immunities secured" by the U.S. Constitution or federal statutes. Moreover, a prevailing party is entitled to attorney's fees under the Civil Rights Improvement Act of 1976 (42 U.S.C. Section 1988). In 1978, more than 100 years after the enactment of the law, the Supreme Court expanded the scope of section 1983 in Monell v. Dep't of Social Services, 436 U.S. 658 (1978) by making cities liable under section 1983 in any case in which city policies or actions effectvely result in a violation of a constitutional right.

In 1980, the Supreme Court increased the potential liability of cities under section 1983 by eliminating the "good faith" defense for cities in Owen v. City of Independence, 445 U.S. 622 (1980). In the same year, the scope of section 1983 was further expanded by the Supreme Court to include violations of any federal statute, including federal laws which are not related to civil rights, by states and localities in Maine v. Thiboutot, 100 S.Ct. 2502 (1980).

Section 1983 has served as the basis for the imposition of a wide range of new obligations on state and local governments. In fact, section 1983 has been used by the courts to establish new legal rights for individuals which require changes in city policies and/or the expenditure of public resources. It is increasingly used by disgruntled employees in disputes with cities over employment practices. In fact, just two weeks ago, the Supreme Court ruled that city employees are entitled to pretermination hearings in Cleveland Board of Education v. Loudermill in a section 1983 case. Although private sector employees may have similar grievances with their employers, section 1983 cannot be used to make changes in the employment practices of private sector employers.

There are thousands of section 1983 lawsuits filed against cities every year. Section 1983 lawsuits have been used, for example, by prisoners to obtain changes in jail conditions, by students to challenge the rules and procedures of public schools, employees to change the employment practices of states and localities, tenants to prevent eviction from public housing, welfare recipients to change state and local welfare practices, and mental patients to obtain changes in the conditions of public institutions.

2. Rights of Mental Patients and Prisones

In addition to being sued by individuals under section 1983, states and localities may be sued by the U.S. Attorney General over the operation of prisons and mental institutions. Under the Civil Rights of Institutionalized Persons Act (42 U.S.C. Section 1997 et seq.), the Attorney General has the authority "to initiate or to intervene in equitable actions against public institutions in which he has reasonable cause to believe there is a systematic pattern or practice of flagrant or egregious violations of the affected persons' constitutional or federal statutory rights." The institutions covered by this law include jails and facilities for the mentally ill owned by states or localities. It has been used by the Department of Justice to estaolish patient-physician ratios in mental institutions and to seek changes in jail conditions, such as the construction of new jails.

3. Antitrust

The Supreme Court, more than 80 years after the antitrust laws were first enacted by Congress in 1890, determined that cities were subject to the federal antitrust laws (15 U.S.C. Section 1 et seq.), unless acting on the basis of a clearly articulated state policy to displace competition with local regulation. This major policy change was the result of two Supreme Court decisions -- City of Lafayette v. Louisiana Power and Light Co., 435 U.S. 389 (1978) and Community Communications Co. v. City of Boulder, 445 U.S. 40 (1982). These rulings have caused major problems for cities, as basic governmental activities, such as zoning, franchising, and licensing, have been subject to antitrust challenge in hundreds of lawsuits which were based on claims that city actions restrained trade or resulted in monopolization.

To some extent, the problems caused by the Lafayette and Boulder rulings have been alleviated. Just last week, the Supreme Court in the Town of Hallie v. City of Eau Claire case, substantially cut back on the potential liability of cities under the antitrust laws. In 1984, Congress enacted the Local Government Antitrust Act precluding the recovery of damages from cities under the antitrust laws (15 U.S.C. Section 34 et seq.). While these corrective actions are helpful, Congress should never have allowed the problem to become as large as it did for cities.

Cities are not businesses; they do not act on the basis of commercial motivation. Yet Congress failed to enact legislation exempting cities from antitrust liability after the Boulder ruling. Instead, it begrudgingly granted only an exemption from damages under the antitrust laws for cities.

4. Communications

The Communications Act of 1934 (47 U.S.C. Section 151 et seq.) provides the Federal Communications Commission (FCC) with broad authority to regulate the broadcasting and telephone industries. In recent years, that law has been used to limit the basic regulatory authority of cities in ways which were clearly not contemplated by Congress at the time of the statute's enactment in 1934. For example, the FCC recently preempted state and local regulation of satellite master antenna television systems in its Earth Satellite Communications decision in 1983. It began a proceeding to preempt local zoning ordinances which adversely affect satellite earth stations just last week. Under the FCC's proposal, the FCC would operate as a zoning "czar" and would have the authority to overrule local zoning decisions, an unprecedented attempt by a federal agency to usurp local regulatory authority.

Similarly, the FCC has begun the process of implementing the Cable Communications Act of 1984 (47 U.S.C. Section 521 et seq.), legislation which was supported by the cities in order to limit FCC preemption of city regulatory authority. It was reported just last week that the FCC is expected to act on April 11 to impose major new restrictions on city authority, restrictions which are not expressly authorized by the Cable Act.

Each of these decisions by the FCC will affect cities in many ways, making the process of implementing public policy at the local level unnecessarily burdensome and stripping cities of basic regulatory powers. They are, for the most part, based on the FCC's plenary powers, not on specific provisions of the Communications Act. It is very rare for Congress to limit preemptive actions of this nature by federal agencies, preferring to rely on the "expertise" of the federal agencies and showing almost no interest in protecting the regulatory authority of states and localities.

Environmental Protection

Congress has relied primarily on states and localities to implement national environmental policy in areas such as water quality, air quality, and the disposal of hazardous wastes. In many cases, it has enacted laws establishing uniform federal

environmental standards and made state and local government primarily responsible for implementing the laws, including financing the costs of complying with various federal standards. In the future, as Congress addresses environmental problems, such as acid rain, the clean-up of hazardous waste sites, and the preservation of the quality of drinking water, it is likely that states and localities will be expected to assume a large portion of the costs of meeting national standards established by Congress. For example, it has been estimated by the Office of Technology Assessment that the cost of cleaning up 10,000 Superfund hazardous waste sites will be $100 billion over 50 years. It is our hope that greater attention will be paid to the costs imposed on states and localities as national standards are developed to deal with these evolving environmental problems. Two examples of environmental mandates which impose substantial costs on states and localities are the Resource Conservation and Recovery Act and the Federal Water Pollution Control Act.

1. Hazardous Waste

In 1984, Congress completely revised the Resource Conservation and Recovery Act (RCRA) (P.L. 98-616) which now establishes national policy with respect to the generation, storage, treatment, and disposal of hazardous wastes. The new law includes provisions which: (1) require the disposal of hazardous

waste from small quantity generators (i.e., 100 kilograms or more of hazardous waste) at a licensed facility (long-standing practice has been to dispose of waste of this nature at municipal dumps); (2) establish strict standards for underground tanks used for the storage of hazardous materials; and (3) establish strict standards (e.g., double liner requirements) for new or expanded land disposal facilities used for the disposal of hazardous waste.

Generally, local governments, by providing dump sites and trash hauling services, are ultimately responsible for the disposal of hazardous waste. The 1984 amendments to RCRA will make that task substantially more complicated and costly. The Environmental Protection Administration (EPA), for example, has estimated that the costs of complying with these new RCRA requirements will be $10 billion to $20 billion a year. The law, however, only authorizes funding for the entire RCRA program of about $250 million per year. Thus, it can be expected that RCRA will substantially increase the costs for cities of providing basic governmental services (i.e., garbage disposal).

2. Clean Water

EPA has estimated that cities will require about $108.9 billion in funding through the year 2000 in order to meet sewage treatment needs, many of which are determined by standards included in the Federal Water Pollution Control Act (33 U.S.C. Section 1151 et seq.). An agency task force has recommended that the Federal Government provide only $27.6 billion of that total through grants and state-administered revolving loan funds and that the federal financing role by phased out. Thus, it the future, cities will be expected to assume a much larger portion of the financial responsibility for ensuring that the nation's waters are clean.

HUMAN MANDATES

As is readily apparent, the already complex job of operating a city has become even more difficult as a result of the legal obligations imposed on cities by Congress and the federal courts. While the cost of complying with these mandates is difficult to determine, it is even more difficult to quantify the cost of meeting the obligations of cities to the low income residents of our communities -- the "human mandates" imposed on cities as a result of the diminishing role of the Federal Government in providing a "safety net" for the truly needy.

To determine the cost of meeting these obligations would require the quantification of a number of variables which are beyond the control of city government. While the cost of these human mandates is difficult to determine, it is not difficult to measure the human misery which results from the failure of government to address these very real human needs.

The major human mandates which can be readily identifiable -- indigent medical care, infant mortality, hunger, homelessness, and poverty -- are classic examples of the "pay me now or pay me later" syndrome. As with the federal budget deficit, these human needs represent real problems which will not disappear in the near future.

Indigent Medical Care

An estimated 20 to 25 million Americans, including eight million children, are "medically indigent" and cannot afford to purchase essential health care services because they are impoverished, lack adequate insurance coverage, or are uninsured. The growth in the number of the medically indigent has coincided with a substantial reduction in the ability of the health care system to respond in a flexible fashion to the health care needs of the low income. In a few cases, financially troubled hospitals have refused to provide service to indigent patients, "dumping" them into public facilities, such as state, county, or municipal hospitals. Some hospitals with major financial problems have threatened to close down or to transfer indigent patients to publicly-owned facilities. Attached is a recent article from the Wall Street Journal which descibes the "dumping" problem.

The increase in the number of Americans without adequate health insurance represents a growing problem for cities. The low income who are not eligible for Medicaid and who cannot afford health insurance and the middle income families who have no insurance or inadequate coverage are "medically indigent." In all likelihood, the medically indigent will turn to cities as the last resort for assistance in obtaining medical care.

Several related factors are gradually forcing states and localities to assume greater responsibility for the health care needs of the medically indigent. Particularly significant is the effect of the ongoing changes in the health care marketplace on the availability of health care services for the medically indigent. For example, various cost containment measures initiated by the public and private sectors have created a far more price sensitive environment. Purchasers of health care service, including insurers, are no longer willing to disregard the differences in prices charged by various hospitals. In this increasingly competitive environment, hospitals and other providers of health care service are being forced to discontinue the practice of subsidizing the costs of providing health care service to the uninsured poor by passing along those costs to other purchasers of health care service.

In addition to these marketplace developments that limit the ability of health care providers to subsidize the costs of the uninsured, the number of uninsured and underinsured individuals is growing as a result of: (1) stricter eligibility requirements under related federal programs (e.g., the reductions in AFDC coverage have reduced the percentage of the low income who qualify for Medicaid); (2) efforts by employers and employees to limit the costs of health insurance by limiting coverage to

certain costs or dropping coverage of dependent); and (3) the residual effects of the 1982 recession (i.e., continuing high unemployment rates in certain areas).

No matter how high the cost of providing health care services for the medically indigent, states and localities must respond to the human needs caused by medical indigency. The community will not and should not tolerate a policy of neglecting the basic health needs of its residents. In fact, in virtually all states, state or county government is legally responsible under state law for financing health care service for the medically indigent. In some cases, this obligation is met by operating public hospitals or financing the provision of health care service to the medically indigent by private providers; however, in other cases, the affected government has yet to acknowledge its legal responsibilities. Recent legal developments suggest that state and local government may face increasing challenges by the medically indigent and private providers to meet these legal obligations.

A comprehensive federal survey of health insurance, health care use, and health care expenditures (the National Medical Care Expenditures Survey (NMCES)) was conducted in 1977 and 1978 and shows that nearly 13 percent of Americans were not covered by

private insurance or federal programs such as Medicaid, Medicare, Veterans Administration, or Indian Health Service. The survey covered an 18-month period and showed that about 16 percent of the population was not covered for at least part of the period covered by the survey. Perhaps more importantly, the data shows that certain subgroups of the population, such as persons 18 to 24 years of age, racial minorities, low income individuals residing in rural areas, and residents of South and the West, are far more likely to be uninsured. The poor, for example, were about twice as likely as middle and high income individuals to have no public or private health insurance throughout the year, underscoring Medicaid's limited coverage of the nation's low income population.

In almost every state, state or local government is required by state law to provide health care for the medically indigent. These obligations are being enforced increasingly through the courts at the same time as state and local governments attempt to cope with the high costs of medical care, limited financial resources, increases in the rate of poverty, and decreases in insurance coverage while hospitals face more restrictive third party payer policies.

Several ongoing developments are likely to add to the pressure on the governments that are responsible for indigent care. First, double digit inflation in medical care costs continues to increase the cost of health care for low and middle income families, forcing larger numbers into the medically indigent category, and for governments responsible for financing the health care costs of the medically indigent. Second, the number of persons below the poverty line continues to increase, while tax limitation measures further limit the public revenues available to meet health care needs. Third, insured individuals are limiting their insurance coverage, further restricting the ability of providers of health care service to spread the costs of charity care among a large number of purchasers of health care service. Furthermore, the increasingly competitive marketplace is causing hospitals to reexamine their traditional role as providers of charity service. Changes in practice include refusing to provide service to charity patients and attempting to obtain reimbursement from new sources, such as state and local government. In many states, hospitals with emergency rooms are prohibited by law from denying emergency service and, consequently, have begun to seek reimbursement for indigent care from states and localities.

State and local governments are being called upon to pay the costs of indigent health care, the costs of which were formerly absorbed by hospitals or patients. This is partially a result of the Federal Government's failure to devise a health care system which ensures that all medically indigent persons have access to medical care. Consequently, the Federal Government should establish policies which ensure that health care services are provided to the medically indigent or that adequate resources are available to state and local government to ensure that the fundamental needs of the medically indigent can be met at the local level.

Infant Mortality

Nearly 40,000 American infants die each year in the first year of their lives. The United States ranks twelth among developed nations in the rate of infant mortality; moreover, the infant mortality rate for blacks is almost double the infant mortality rate for whites. These statistics are of particular concern to cities in light of the Federal Government's abdication of its role in providing prenatal, neonatal, and postneonatal care. America's cities will become the last source of assistance in preventing infant mortality.

Recent studies by the Committee to Study the Prevention of Low Birthweight (Division of Health Promotion and Disease Prevention, Institute of Medicine) show that low birthweight is a major cause of infant mortality in the United States. Three-quarters of all neonatal deaths are related to low birthweight which is generally attributable to poor maternal nutrition and prenatal care. While more low birthweight babies are living beyond their first month, due to special hospital neonatal units, they are far more likely than babies of a normal birthweight to die before their first birthday. Infants weighing 2,500 grams (5.5 pounds) or less are almost 40 times more likely to die in the first four weeks of their lives than infants of a normal birthweight. In addition, low birthweight babies who survive are more likely to face major health problems later in life, such as neurodevelopmental handicaps and lower respiratory tract conditions.

Such federal programs as the Women, Infants, and Children (WIC) program are designed in part to reduce the infant mortality rate. WIC is a three-part intervention program involving supplemental food, nutritional counseling, and prenatal care for nutritionally and financially disadvantaged women. Studies have shown that participation in the WIC program results in improvements in the outcome of the pregnancy, including increased birthweight. The

results also show that long-term participation in the program during pregnancy (i.e., more than 6 months) is associated with even greater improvements in the outcome of the pregnancy.

Infant mortality figures from cities around the nation show a direct connection between high rates of poverty and high rates of infant mortality. For example, 21 of every 1,000 babies born in the Morrisania section of the Borough of Bronx in New York City will die before their first birthday while the number is only 6.2 in the nearby Astoria section of the Borough of Queens. Similarly, the number of deaths for every 1,000 births is 17 in New Haven, Connecticut, 25.6 in New York City's central Harlem, 22 in Trenton, New Jersey, and 55 in the Avalon Park section of Chicago.

These numbers take on added significance in light of the recent action of the Senate Budget Committee to cut $70 million from the $1.4 billion WIC program, thereby reducing the number of people served by the program by 100,000. Only one-third of the nine million eligible for the program are presently being served by the WIC program because of budgetary constraints. A federal advisory panel estimates that every dollar spent on prenatal care for high risk women will result in savings of $3.38 in specialized care after the birth of the baby. The National Governors Association Task Force on Infant Mortality recently reported that "preventive prenatal and infant health care more

than pays for itself" and that "prenatal and infant care can save $2 to $10 for every preventive dollar invested." The short-term savings from reducing or eliminating preventive measures will be offset by long-term social and economic costs resulting from inadequate prenatal and infant nutrition and health care. Low birthweight babies are more likely to require public support for the costs of the medical care which is needed after the birth. The source of funds for this treatment is likely to be state and local government in many cases as eligibility for Medicaid is restricted and hospitals eliminate charity service.

Hunger

The problem of hunger in America's cities is growing and is increasingly coming to be regarded as a "local" problem. Documentation of the increases in the lines at soup kitchens and food pantries is both abundant and frightening:

- In Detroit, Michigan the number of community organizations providing emergency food assistance has increased 426 percent since 1974.
- Cleveland, Ohio had a 219 percent increase in emergency food requests between 1978 and 1982.
- In New Orleans, Louisiana, there was a 222 percent increase in emergency food requests from 1982 to 1983.
- In Rochester, New York, soup kitchens increased by 75 percent from 1982 to 1983.
- In New York City, the number of people relying on emergency food assistance increased by 75 percent from 1983 to 1984.

According to "Hunger in America: The Growing Epidemic," a recent report by the Physician Task Force on Hunger in America, hunger has reached epidemic proportions nationwide, directly affecting as many as 20 million people. The report, which describes the hunger problem as increasing despite the economic recovery, concludes that hunger is a result of the lingering effects of the recession and cutbacks in income and nutrition programs that have left 35.5 million Americans below the poverty level. One of the most graphic findings of the study is that clinics in poor areas report cases of kwashiorkor and marasmus, two "third world diseases of advanced malnutrition," as well as vitamin deficiencies, lethargy, "stunting," "wasting" and other health problems attributable to poor nutrition.

The single most disturbing aspect of increased hunger is the evidence of health problems affecting poor children which are related to malnutrition. For example, the Massachusetts Department of Public Health reported in late 1983 that 10,000 to 17,500 poor children in Massachusetts suffered stunted growth, largely due to chronic malnutrition. In fact, nearly one of every five low income children covered by the Massachusetts survey was either stunted, anemic, or underweight.

Cook County Hospital in Chicago, Illinois, between 1981 and 1983, experienced a 24 percent increase in the number of children admitted for failure to thrive, diarrhea, or dehydration, conditions often linked to inadequate nutrition. Follow-up studies found that 30 percent of all children coming to the hospital's emergency room had abnormally low rates of growth, and that half of these "low growth" children had inadequate diets.

This data indicates that poor children are particularly vulnerable to the effects of inadequate nutrition, an especially alarming development as federal programs, such as food stamps, child nutrition, and WIC, which are designed to alleviate these problems have been significantly cut back. As a result of these cutbacks, millions of the poor are not receiving food assistance under these programs, while millions of others are receiving benefits which are too low to provide adequate food and nutrition. This means that state and local government will have to step into the void and assume greater responsibility for ensuring that the basic nutrition needs of low income reidents of the community are met. The failure to assume that responsibility will cause even greater long-term costs for the nation when a significant percentage of the population develops health and other social problems develop as a result of poor nutrition.

Homelessness

Homelessness is becoming one the nation's most visible tradegies, transcending many other social and human problems. It is due to a variety of factors, including cutbacks in various social programs. A major contributing factor is the Federal Government's effective abandonment of housing programs in recent years. Cities are now confronted with the monumental task of housing the millions of homeless with very little assistance from the Federal Government.

Despite the general improvement in the nation's economy, the number of people who have become homeless has increased dramatically in the past few years. Estimates of the total number of homeless range from the 250,000 to 300,000 estimate of the Department of Housing and Urban Development to the tnree million estimate made by the nation's network of community organizations which operate shelters for the homeless. The generally accepted figure is approximately two million, with that number expected to increase by as much as 38 percent per year, according to the General Accounting Office.

The ranks of the homeless are no longer limited to the stereotypical middle-aged alcoholic white male and a few "bag ladies." The homeless include children, young men and women, and families. Many are minorities. Some of the homeless are alcoholics or drug users; others are former mental patients who

have been deinstitutionalized under court mandate. Some have worked all of their lives while others have been unemployed for long periods of time. Many of the homeless, such as homeless families, are considered to be the "new poor" who, as a result of unemployment, cutbacks in public assistance programs, or domestic problems, can no longer afford the basic necessity of shelter.

A major cause of this problem is the diminishing supply of low cost housing. The federal government, the primary provider of low cost housing, has substantially cut back on its participation in the low cost housing market. Since 1980, the primary federal housing programs for the low income (i.e., the Public Housing Program and the Section 8 Program) have been virtually eliminated.

Cities cannot ignore the homeless, especially when they sleep in city streets and parks. They must seek both short-term and long-term answers to the problem by providing emergency shelter and permanent housing. The problem of the homeless is clearly a national one. If one city invests its resources in providing quality housing for the low income, the homeless will be drawn to the city, placing additional strains on the city's already limited resources. Thus, it is clear that the problem of homelessness must be addressed on a national basis.

Poverty

The national rate of poverty has increased significantly in recent years, rising gradually from 11.7 percent in 1979 to 15.2 percent in 1983, according to the Census Bureau, and has been largely unaffected by the economic recovery. There were about nine million more poor people in 1983 than there were in 1979, an overall increase of nearly one-third in just four years.

The ranks of the poor are increasingly made up of children whose economic condition is determined by such disparate factors as the condition of the national economy and family structure. Nearly 28 percent of the nation's children are poor or near poor (i.e., the poverty level is now defined by the Census Bureau as a per capita annual income of $3,180 or less). In 1983, there were 13.7 million children who were classified as poor, a 3.4 million increase since 1979. An additional 3.7 million children were near poor (i.e., per capita incomes that were 125 percent or less of the poverty level). Children now make up the largest block of poor people in the United States. In fact, the poverty rate for children was 22.2 percent in 1983, compared to 12.7 percent for the general population, according to a recent report of the Congressional Budget Office (CBO) entitled "Poverty Among

Children." Moreover, the poverty rate for children is at its highest level in 21 years. CBO concluded that the recent increase in child poverty since 1979 "is likely the result of the severe back-to-back recessions of 1980 and 1981-82, the rapid inflation of 1979-80, and reductions in income maintenance programs."

The cost of providing welfare assistance and of maintaining the "safety net" is falling more heavily on the nation's cities. Portland, Maine, for example, has experienced a 700 percent increase in the cost of providing welfare assistance, from $740,000 in Fiscal Year 1982 to over $5 million for Fiscal Year 1986. Thus, cities, because the future of the nation's children is at stake in many cases, are being forced to assume greater responsibility for the social and economic problems created by poverty. The future of the nation's children is as much a federal responsibility as a local one and the Federal Government should continue to support efforts to address the problems of poverty.

CONCLUSION

The cost to the nation's cities of complying with legal and human mandates is immeasurable. The problems which the mandates have caused for cities are as real as the problems caused by the burgeoning federal deficit. Congress' must recognize the interdependent nature of the intergovernmental system and the importance of continued federal support for local efforts to cope with problems which are national in scope.

The legal mandates which have been imposed on local governments by Congress and the federal courts are generally based national public policy objectives established by Congress, many of which the National League of Cities strongly supports. However, some federal assistance is necessary to ensure that cities have the financial resources to comply with these mandates. Almost all the legal mandates which we have described today are not imposed on cities as grant conditions; rather, they apply to cities whether or not they receive federal assistance. Moreover, they apply, to some degree, to every city in the nation. Certainly the General Revenue Sharing program should be maintained in order to ensure that all cities have some federal assistance in meeting these national goals.

Similarly, the human mandates resulting from medical indigency, poverty, homelessness, hunger, and infant mortality, are problems which are national in scope. They are no longer cyclical problems which can be corrected by improvements in the overall health of the economy but rather have become structural problems. When basic human needs are not being met, the low income do not call the Department of Health and Human Services. They do not call the Department of Housing and Urban Development. They do not call the Governor. They dial 9-1-1. As Roland Luedtke, Chair of NLC's Human Development Committee likes to say, "We mayors are in nose-punching range."

NLC's Board of Directors voted on March 24, 1985, as part of NLC's Priorities' Statement, to support a freeze in federal spending at Fiscal Year 1985 levels. However, the NLC Board also took the position that needs-based programs, such as Medicaid, Aid to Families with Dependent Children, WIC, and food stamps, which are aimed primarily at the human needs of the low income should not be frozen. It is our hope that Congress will recognize that there are fundamental human needs which must be addressed on a cooperative basis by the Federal Government and the nation's cities.

We stand prepared to make our contribution to efforts to reduce the federal deficit. However, Congress must recognize that the national government must share responsibility for the costs of legal and human mandates.

Thank you.

[From the Wall Street Journal, March 8, 1985]

## Hospitals in Cost Squeeze "Dump" More Patients Who Can't Pay Bills

A 32-year-old accident victim lies unconscious in a Florida hospital that has no neurosurgeon available. But two larger hospitals with neurosurgeons refuse to accept him upon learning there is no guarantee his bill will be paid.

A pediatrician in a Rock Hill, S.C., hospital wants to transfer a comatose three-year-old girl to a better-equipped urban medical center. But her family has no health insurance, and two hospitals refuse to take her. A hospital 100 miles away finally accepts her.

These are examples of a controversial practice called "dumping," wherein hospitals avoid admitting or keeping poor or uninsured patients by sending them to hospitals willing to bear the costs.

The practice isn't new but has surged recently, largely as a result of cuts in Medicaid and Medicare support to individuals and health-care institutions. "The number of hospitals willing to provide free care is small and dwindling, but the number of patients who are uninsured is rising," says Judith Feder, an economist with Georgetown University's Center for Health Policy.

Dumping isn't illegal or even unethical; hospitals face fines, loss of license, civil damages or other penalties only if patients fail to get needed care.

### HEART ATTACKS AND BROKEN BONES

But many doctors contend that the practice inevitably contributes to less-than-optimal care for some patients. Last year several Harvard Medical School doctors published an analysis of medical records of 103 patients transferred from private hospitals to tax-supported Highland General Hospital in Oakland, Calif. In 33 cases they concluded that the transfer jeopardized the patient. For example, they found that heart-attack and stroke patients were transferred before being stabilized, and that patients with broken bones weren't given antibiotics before being dumped. In one private hospital, two neurosurgeons refused to see a 36-year-old uninsured man who had received head injuries in a fight. He went into a coma before being transferred to Highland, where doctors discovered he had a fractured skull. The man died without regaining consciousness.

The study concluded that the transfers appeared to have been for economic rather than medical reasons because Highland's care wasn't necessarily better than that of the private hospitals. "What we found were that the transfers were a form of medical abuse," says David U. Himmelstein, head of the Harvard project.

That view gets support from Arnold Relman, editor of the influential New England Journal of Medicine in a recent editorial: "As economic pressures on hospitals grow and hospital managers are encouraged or forced to act like businessmen concerned primarily with profit margins, more and more patients will be denied access to urgently needed care simply because they can't pay for it.

Evidence is mounting that dumping is on the rise. In Dallas, for example, indigent patients are transferred from private hospitals to tax-supported Parkland Memorial Hospital at the rate of 200 a month, nearly three times the 1983 rate.

Last year, Cook County Hospital in Chicago admitted 6,000 emergency patients transferred from private hospitals. That's five times as many transfers as four years ago, says Gordon Schiff, Cook County Hospital physician who co-authored a recent study of dumping there. Private institutions often patch up an indigent emergency patient just enough to survive the ride to Cook County, says Dr. Schiff. "They treat 'em, stabilize 'em and dump 'em."

Emergency patients aren't the only people who get dumped. "In recent months we've been seeing more and more patients with simple problems who are brought here because it would take the other hospital 15 or 20 minutes to treat the problem and they wouldn't get paid for it," says Robert Rothstein, chairman of the emergency department at Los Angeles County-Harbor UCLA Medical Center.

Dumping's resurgence is largely a result of financial problems facing Medicare and Medicaid; the two insurance programs enacted 20 years ago to stop the dumping of the elderly and poor into charity wards and public hospitals where they received second-class care.

### THE MEDICAID SQUEEZE

Several years ago, many states, alarmed at the cost of their share of Medicaid, began to cut the near-poor from the program, restrict benefits to those who remained on the rolls and reduce payments to hospitals. For awhile, hospitals made

up losses from nonpaying patients and Medicaid patients by increasing charges to Medicare, Blue Cross and privately insured patients.

But early last year, the Medicare program—the biggest source of income for most general hospitals—began curtailing hospital payments to half skyrocketing costs. Private hospitals says they continue to provide free care equal to 4% to 6% of their costs but add that Medicare and Medicaid cuts force new limits on how many nonpaying patients they can accept.

"We just can't handle everyone who comes in; we'd go broke," says John Easton, a spokesman for the University of Chicago hospitals.

Most hospitals insist that they never turn patients with serious or life-threatening conditions away from the emergency room. But doctors say dumping can be subtle, making it difficult to distinguish the case of a patient transferred for economic reasons from the case of one transferred for legitimate medical reasons.

Take, for example, the case of Costica Cretu, a 32-year-old Rumanian refugee who worked as a dishwasher in Key West, Fla. Mr. Cretu received head injuries when he was struck by a car last August. He was taken to private Florida Keys Memorial Hospital, where he was put on a life-support system. Friends told the hospital Mr. Cretu probably couldn't pay this bill. Nor would the county guarantee payment, say state officials who investigated the case. It hasn't any funds for indigent care.

NO GUARANTEED PAYMENT

Florida Keys, which has no neurosurgeon, unsuccessfully tried transferring Mr. Cretu to two other hospitals. Tax-supported Jackson Memorial Hospital in Miami says it refused the transfer because it considered Mr. Cretu to be "brain dead." A spokesman for South Miami Hospital, a private institution, says the hospital thought it would be unwieldy to transfer Mr. Cretu by helicopter. Moreover, he added: "Apparently there wasn't any way to be reimbursed." But Lee Dykes, a state health-department investigator, says "The problem at both hospitals was lack of guaranteed payment." Mr. Cretu died of brain injuries three days after the accident.

Hal Anderson, the Rock Hill, S.C., pediatrician, found it difficult last July to transfer three-year-old Shameka McMullen from Piedmont Medical Center to a better-equipped urban hospital. A comatose Miss McMullen was admitted to Piedmont after suffering a stroke and brain damage following the onset of meningitis. Piedmont, a for-profit hospital owned by American Medical International, has no intensive-care unit. Because no neurosurgeon was available there, Dr. Anderson appealed to Richland Memorial Hospital in Columbia, S.C., 77 miles away. Richland refused to accept the girl.

Judy Cotchett Smith, a Richland spokeswoman, says the hospital admits patients with life-threatening illnesses to its emergency room regardless of ability to pay. But Miss McMullen, whose family had no insurance, was in the care of a hospital in another county. Ms. Smith says Richland doesn't accept transfers of indigent patients from outside the county unless the transferring hospital agrees to pay the bill, but Piedmont wouldn't guarantee payment. A Piedmont spokeswoman says Piedmont provided $2.5 million worth of free care for indigent patients last year and can't afford to pay expenses for patients transferred to other hospitals.

A MISTAKE IN COMMUNICATIONS

Dr. Anderson then tried transferring Miss McMullen to Charlotte Memorial Hospital, 25 miles across the state line in Charlotte, N.C. Al Pruitt, a Charlotte spokesman, describes that hospital's refusal to accept her as "a mistake in communications during a late-night telephone conversation." He says the hospital physician who spoke with Dr. Anderson wasn't a regular member of the emergency staff and was unaware that the hospital would accept acutely ill patients from another state. But Mr. Pruitt says that Charlotte hospitals are reluctant to accept indigent patients from South Carolina because that state's Medicaid program won't pay for treatment outside South Carolina.

Three hours after Dr. Anderson began trying to transfer Miss McMullen, North Carolina Baptist Hospital in Winston-Salem, 100 miles away, agreed to accept her. But specialists there could do little for her. Two months later the comotose child was released to her mother. She died early last month. Dr. Anderson says the delay in transferring her probably didn't affect the outcome, but he considers her case a tragic example of the difficulty getting care for indigents.

Maria and Charles Musgrave of Houston say they experienced dumping about 18 months ago when Mrs. Musgrave was admitted to Hermann Hospital in the early stages of labor to have her baby. The Musgraves had previously paid a $250 deposit on their $1,500 bill. After an overnight stay, tests revealed she should deliver by

Caesarean section. But the Musgraves say the hospital asked for "cash up front" for the $4,000 operation upon learning the couple didn't have health insurance. The Musgraves say they offered to pay in installments but the hospitals told Mrs. Musgrave to go to the county hospital, Mr. Musgrave drove his wife, who was already contracting, to Jefferson Davis Hospital where their son was born six hours later.

Hermann Hospital officials cite patient confidentiality in declining to discuss the case, a spokesman says childbirth is considered an elective procedure requiring proof of ability to pay before admission.

Some states are acting to curb dumping's abuses. Last year Florida began taxing private hospitals at a rate of 1% of their revenues to fund a pool to pay bills of uninsured low-income patients. Kentucky business and health leaders formed a foundation to persuade doctors and hospitals to volunteer free care for poor patients not covered by health-care plans. A telephone hotline service begun in January arranged free care for almost 12,000 patients in its first six weeks.

And, according to George Washington University's Intergovernmental Health Policy Project, 22 state legislatures are considering programs to alleviate dumping. "Some are looking to expand their Medicaid eligibility," says research associate Randy Desonia. "Some of these are the same states that restricted eligibility in recent years."

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STATEMENT OF STATE SENATOR PAUL VIOLETTE, MAJORITY LEADER, MAINE SENATE

Mr. Chairman and Members of the Subcommittee: I want to thank you for the opportunity to testify on S. 483, the "Intergovernmental Regulatory Relief Act of 1985." As majority leader of the Maine Senate and as Vice-Chair of the National Conference of State Legislatures' (NCSL) Committee on Government Operations and Regulation, I am extremely encouraged by this legislation since it proposes several key policy changes which could strengthen intergovernmental rulemaking and relations.

Like many of the groups represented here today, NCSL has had regulatory reform as one of its agenda items for many years. Without any visible decline in the numbers and effects of federal regulatory programs, it is likely that regulatory reform will continue to hold a position of priority concern. While regulatory reform covers a broad span of process and procedure-related areas, that portion involving intergovernmental relations stands out prominently.

S. 483 addresses, either directly or indirectly, several issues which NCSL believes require resolution so that the entire intergovernmental structure can function more productively.

First, while NCSL has never specifically recommend either full or selective reimbursement for the funding of intergovernmental regulations when a national purpose is at stake, the organization has urged the federal government to: (A) consider likely costs imposed by its regulations; (B) establish a process for reviewing existing regulations for negative impacts on state and local governments, and (C) discontinue the imposition of program mandates which are underfunded.

S. 483 would seem to address, at least in part, these three major concerns through the development of an annual Presidential report on economic, noneconomic and direct costs experienced by state and local governments. This report could place all executive agencies and Congress on annual notice as to the new and/or continuing costs attributable to individual intergovernmental regulations.

While compiling this report looms as no easy task, the continued lack of such a report only serves to guarantee overlooking the true costs of regulatory Federalism and the burdens it places on state and local governments in particular. As a veteran state legislator, I am constantly compelled to know, as thoroughly as possible, the fiscal impact of state laws and regulations on local governments and special-purpose districts. While gathering the appropriate data is frequently difficult, and I assume that is true in most states, it is the only way to substantiate an "aye" or "nay" vote in most instances. It is also the only way to understand what state revenues are being expended for and whether they are sufficient to meet legislative objectives.

I would like to point out that S. 483 may or may not quite accomplish all that I feel is essential. Not being totally familiar with the bill's language, it seems that the proposed Presidential report only applies to grant-related statutes and not all Federal law. NCSL would certainly urge that likely or known costs which would be reimbursable should be those attributable to any and all Federal statutes.

The report to be completed by the President (Title II) would serve to address NCSL's concern that the federal government review regulations for their potential negative impacts on state and local governments. While the organization's policy

deals with much more than costs, the report could well consider the potential for reducing costs through performance and efficiency standards as well as through administrative flexibility.

State have too often been either "surprised" by shifts in federal regulatory policy or unaware of just how much money and manpower they must provide just to maintain compliance with federal directives. I recall in 1983 that the Maine Legislature had to find $315,000 in additional state revenues and 24 new employees to avoid the loss of Federal AFDC and Food Stamp fund. The amount might appear small, by the $315,000 represents a significant amount in Maine's annual budget. The threatened loss, however, did not stem from legislative oversight or opposition. Rather, it originated from a regulatory-mandated change in the frequency of gathering personal data on recipients from a quarterly to a monthly basis.

There has been much data accumulated, which appropriately supports the fiscal impact of intergovernmental regulation on state and local governments. The Clean Air and Water Acts, the National Environmental Policy Act, the Rehabilitation Act of 1973 and others have placed burdensome mandates on states either directly through statutory mandates or subsequently through federal agency regulations. So as not to repeat what others might have already cited here today or published earlier, I would mention a recent instance in Maine involving Medicaid monies and interpretational shifts in federal regulatory policy. Our state and local governments were compelled to review over 3,000 cases, going back to 1977, because a Federal agency claimed, in a self-initiated regulatory turnaround, that all individuals who had lost Supplemental Security Income benefits, for any reason, would remain eligible for Medicaid. This countered a lont-term understanding that the numbers actually eligible were more severely restricted.

I mentioned earlier NCSL's opposition to underfunded program mandates. S. 483 would seem to potentially resolve some or all of this problem since the organization has considered costs for compliance with intergovernmental regulations as part of our concern with "lack of sufficient program funding."

The second area on which I would like to comment is on the prescription for federal courts and federal agencies of a rule for full or proportionate payment for additional costs of intergovernmental regulation. While NCSL policy, as I mentioned earlier, does not address any reimbursement or payment method, the organization would not want to be placed in a postion of supporting the validation of a rule which might otherwise be invalid under the statute it was purportedly implementing. While this might not occur with S. 483, it might be worthwhile to add language to ensure that state and local rights to challenge federal rules are not preempted by federal reimbursement for costs of intergovernmental regulations.

My third point, and one which the bill's authors have pointed out in their legislative declaration, is that Federal regulation of State and local governments has become increasingly intrusive and extensive. While I personally felt that the block grants, for example, might lead us to an era of reduced Federal intervention and stronger intergovernmental relationships, it seems as if we have become even more preoccupied with a web of regulatory entanglements. Like many state legislators, I have gradually achieved greater understanding of and familiarity with Federal programs and their objectives. That's good news for me. The bad news is that I am constantly staggered by the parade of state agency heads who come before the Senate with requests for increased appropriations, some or all of which are attributable to federal regulations and policies.

While I do not expect this to stop, I do feel that S. 483 might foster a healthier attitude toward the precise need for federal regulations when identifiable national objectives are on the table. NCSL has long called for federal agencies to conduct regular analyses of proposed and existing rules. S. 483 does not directly mandate such a review but it does set up a reporting process which could possibly lead to an improved intergovernmental rulemaking process. I would suggest to the bill's sponsors that language mandating agency review of regulations, proposed or in effect, for cost-benefit analysis purposes and for gauging any pre-emptive impact on state laws to be added to S. 483.

I have attempted, with NCSL and other legislative staff assistance, to throroughly review the legislation under consideration today. I have attached completed a more technical analysis of S. 483, accompanied by several recommendations, to my testimony for your review.

Mr. Chairman, I repeat that I am very much pleased that you have not only introduced S. 483 but have now commenced public hearings on it. Your objectives very much address NCSL's concerns and, to that extent, the organization has urged me to speak in support of it. Thank you.

## Additional Comments on the Intergovernmental Relief Act of 1985, S. 483

### GENERAL COMMENTS

NCSL has previously adopted budget policy opposed to underfunded mandates. This policy has not covered the costs of constitutional duties. NCSL suggests that the bill fund situations arising from constitutional duties through federal cost sharing if certain factual situations exist which demonstrate proper intentions by the states—or some standard which would not induce a court to have the federal government pay for willful or intentional neglect of constitutional duties.

### FINDINGS AND PURPOSES

Subsection (b)(2)—page 2—refers to "major national objectives". The term is undefined. The sentence should end after the word "minimum" so as to avoid the appearance of creating one more limiting test on what would be paid for—or—the words "major national" should be dropped.

### DEFINITIONS

"Additional direct costs"—page 3—refers as written only to federal agency rules under assistance laws. The term would apply only to those costs that are incurred as a result of the "law" under which the agency rules. It would be more straightforward for the costs to be those created by the agency rule and/or the appropriate law.

Several of the definitions, "compliance reforms", "economic incentives", marketable rights", "performance standards", and those related to "small governments" appear to have meaning only with regard to the President's report called for in Title I. The bill itself might be simplified by including these terms in the committee's report on Title I. Although the bill may in fact have an interest in regulating the President's interpretation of these terms, they may be too subjective and could be ignored in part.

"Intergovernmental regulation"—page 4—is the key term in the bill. As defined, the term appears to refer only to grant rules issued by federal agencies. Other sections of the bill further restrict the application of the term to cost analyses, but only costs beyond those contributions already required by the statutes. The term may end up in these circumstances referring only to federal agency grant rules which are not clearly a result of statutes. NCSL questions whether the bill's sponsors intend new standards on upholding federal agency expressions which affect state and/or local governments?

### TITLE I

The term "uneconomic costs" is undefined. The term "cost" itself is "economic" by its very nature. NCSL suggests that the term "non-economic effects" be utilized.

The President is directed to report by "fiscal years". With a small amount of additional work, the report could be made quarterly if not monthly. This would permit most state and local governments to summarize the inventory of effects by their fiscal period.

Under the current definition of "intergovernmental regulation", the list called for in Section 101. (b)—page 7—might result in the creation of a complete codification of all grant rules in one document or code. This might be beneficial for everyone. NCSL reminds the subcommittee that the inventory should include OMB and GAO rules.

Subparagraph (4) would induce the President to report suggestions for statutory changes to promote a change in the balance of benefits and costs. NCSL would possibly oppose any suggestion that if great benefits accrue to the states and local governments, then more costs ought to be shifted to them so as to gain a more "favorable balance".

### TITLE II

Section 201. (c). This language refers to the Congressional Budget Office, an arm of Congress, as the entity which would issue the statement on final costs. Presumably this would be a final and binding statement. The role of CBO appears to duplicate the President's reporting requirements. NCSL urges that only one agency be made responsible for developing a final statement.

Section 204. This section calls for payment to be made to the states which, in turn, would be called upon to pay local governments as directed by the President

and OMB. NCSL would oppose such a process. If the federal government can be certain of their findings to the extent that they can prescribe actual payment, then the federal government should reimburse local governments directly.

Senator DURENBERGER. Gentlemen, thank you all very much. We appreciate your testimony. The hearing is adjourned.

[Whereupon, at 11:34 a.m., the subcommittee adjourned to reconvene at the call of the Chair.]

# INTERGOVERNMENTAL REGULATORY RELIEF ACT OF 1985

TUESDAY, MAY 14, 1985

U.S. SENATE,
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The subcommittee met at 10:45 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Dave Durenberger (chairman of the subcommittee) presiding.

Present: Senator Durenberger.

## OPENING STATEMENT OF SENATOR DURENBERGER

Senator DURENBERGER. Good morning. The hearing will come to order.

This is the second of two hearings by this subcommittee on the bill S. 483, the Intergovernmental Regulatory Relief Act of 1985, which I introduced earlier this year.

I have spent a good deal of time over the past few years drawing attention to the problems caused by Federal regulation of State and local governments. I have described this problem as one of overregulation. This is a good characterization because the Federal Government regulates too much in some areas and because it often regulates in ways which cost more than is necessary.

We were to have heard also today from my colleague, Pete Wilson, the distinguished junior Senator from California, and cosponsor of this vital legislation, but we couldn't arrange for an ambulance to get him here. [Laughter.] He would have testified on California's pioneering in mandate reimbursement, some of which we will hear about today.

Some of the credit, however, for designing the California program goes to Pete Wilson. As mayor of the city of San Diego for 11 years before coming to the Senate, Pete is certainly qualified to speak for local governments on this subject. We will have his written testimony submitted for the hearing record.

My full statement will be entered in the record at this point and Senator Wilson's statement will follow mine.

[The statements referred to follow:]

PREPARED STATEMENT OF SENATOR DURENBERGER

This is the second of two Hearings by this Subcommittee on the bill, S. 483, the Intergovernmental Regulatory Relief Act of 1985, which I introduced earlier this year.

I have spent a good deal of time over the past few years drawing attention to the problems caused by federal regulation of state and local governments. I have described this problem as one of over-regulation. Over-regulation is a good characterization because the federal government regulates too much in some areas, and because it often regulates in ways which cost more than is necessary.

Over the course of the past two decades, federal regulation of state and local governments has grown to such an extent that the present era of intergovernmental relations may accurately be dubbed, the Age of Regulatory Federalism. Compare that epithet to those given earlier eras in our nation's history—for instance, the Era of Dual Federalism, suggesting genuine spheres of state autonomy, and Cooperative Federalism, suggesting a strong partnership among all levels of government. At best, Regulatory Federalism suggests a lopsided partnership and one-sided autonomy. In other words, Regulatory Federalism connotes imbalance.

And, unfortunately, the problem of Regulatory Federalism is not confined to epithets and academic theories of intergovernmental relations. Practical problems attend the new forms of regulation, including, first and foremost, the costs of such mandates.

During the period of ever-increasing federal assistance to states and localities those costs may not have seemed quite so burdensome. But now the carrot of federal assistance is shrinking while the strings of regulation remain as many, as costly, and as tangled as ever.

The issues here are many and complex. But two stand out: equity and feasibility. Equity raises the question of whether it is fair to ask states and localities to shoulder the costs of implementing federal regulatory programs without regard for their ability to pay. Feasibility forces us to ask if it is sensible to set forth national goals—however laudable—without considering the capacity, both fiscal and administrative, of those to whom we hand the responsibility for realizing those goals.

To date, we have not addressed either issue. While Congress ponders the federal government's budgetary woes, it remains insensitive to those of the state and local governments compelled to effect national policy goals through direct orders, partial pre-emptions, and unrelated requirements attached to grants-in-aid. It is the purpose of this bill to increase congressional sensitivity to the regulatory costs borne by states and localities and thus relieve our partners in the federal system of part of what Mayor Koch called the Mandate Millstone.

Today's hearing is an attempt to grapple with the difficult issues of cost estimates and mandate re imbursement. To those ends, we will be hearing from the Advisory Commission on Intergovernmental Relations whose study of Regulatory Federalism inspired the current legislation. We will also hear from a group of scholars who themselves have attempted to assess the costs of mandates. Finally, we will benefit from the states' experience in re-imbursing localities for the costs of state-imposed directives.

Today, we were to have heard from Pete Wilson, the distinguished Junior Senator from California and cosponsor of this vital legislation. However, Pete is in the hospital recovering from emergency surgery to remove his appendix. I know Pete wanted to be here today because he feels strongly about S. 483. The State of California is a pioneer in mandate re-imbursement. Some of the credit for creating the California program goes to Pete. Moreover, as Mayor of the City of San Diego for 11 years before coming to the Senate, Pete is well qualified to speak for local governments on this subject.

While we will be without benefit of Pete's oral remarks, he has submitted written testimony which will be placed in the Hearing record.

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PREPARED STATEMENT OF SENATOR PETE WILSON

Mr. Chairman, I appreciate the opportunity to submit testimony regarding S. 483, the "Intergovernmental Regulatory Relief Act of 1985" and regret that I was unable to personally testify before your committee.

At the start, I want to express my thanks to the distinguished Chairman, for your continued efforts to make the Intergovernmental Regulatory Relief Act of 1985 a reality. Additionally, I want to thank your staff for the able assistance they have provided my office.

This legislation offers the opportunity to bring a greater measure of fairness to the entire process by which Congress seeks to impose its will and its judgment upon the States and the local governments of this Nation. The ultimate objective here is to require Federal reimbursement for any additional costs incurred by State and local governments in complying with new Federal regulations.

Mr. Chairman, in my previous capacities as a State legislator and particularly during my tenure as mayor of a large city, I have questioned the judgment of legislators at the Federal level and have even expressed deep resentment at their having imposed not only their judgment but the cost of their judgments upon local taxpayers.

The principal involved here, simply stated, is that the National Government bears some responsibility to fund duties and requirements it chooses to impose upon State and local governments.

The Advisory Commission on Intergovernmental Relations (ACIR) recently published a report entitled "Regulatory Federalism: Policy, Process, Impact and Reform" which found that federal mandates have increased significantly during the 1960s and 1970s, and have become increasingly burdensome and costly to the states and their political subdivisions.

Mr. Chairman, this is not unlike my experience in California where the State imposed upon local governments regulatory requirements without the benefit of adequate funding. Finally the situation became so intolerable that the State legislature, to cure its own sin, enacted what was then called Senate Bill 90 (SB90), which said very simply that the State shall no longer impose new duties upon local governments without providing the funds for the performance of those duties.

SB90 did not bring immediate change to the situation but over time, and in conjunction with California's Proposition 13, has resulted in significant improvements in the way the state offers mandates for its political subdivisions. After Proposition 13, the state mandated cost program evolved into an effective and useful program largely because of the new limits placed on the discretion of local governments to raise revenues.

More recently, SB 90 has weathered a severe state deficit. During California's budget crisis, the state continued the mandated cost program because it felt the costs were far exceeded by the benefits of SB 90. Inherent in SB 90 is the requirement for an independent cost analysis of legislation before it is enacted, and the full costs of potential legislation. Thus, the impact on local governments and their budgets is understood before enactment. The net result of this process is renewed prioritization that allows essential legislation to be enacted while less vital programs are screened out.

Other benefits include the simplification of often cumbersome administrative procedures, thereby reducing costs of new programs. Additionally, the mandated cost program has fostered improved relationships between the state and its political subdivisions. As a former mayor, it was not always that my city did not want to implement new programs, but that my city could not afford these new financial obligations. The mandated cost program has helped to facilitate better implementation of new programs and the fiscal notes process has led to full consideration of the local government perspective throughout the state legislative process not just after enactment.

Mr. Chairman, I believe that the present federal deficit crisis offers an important opportunity to implement a federal cost reimbursement program. As we at the federal level continue to ask for budget reductions to help the federal government live within its means, we must consider the impact of our actions on States and their localities. It does not seem right to this Senator to try to meet national objectives by simply passing the costs of programs onto state and local governments.

Contrary to the beliefs of some critics, mandated cost reimbursement, it not a "free ride" for state and local governments. State and local governments have their own priorities and needs as does Congress, and to be effective the state and local governments must have autonomy to meet the needs of their constituencies. As we end revenue sharing and reduce other programs for local governments, then Congress must not ask these governments to accept the full financial responsibility for new federal mandates. If a need is within federal jurisdiction to mandate, then the federal government should be paying any costs incurred. Instead of jeopardizing the fiscal well-being of our states and their political subdivisions, it is time for Congress to start living within its means and not pass the financial buck to state and local governments.

As Congress strives to revive new federalism and change federal programs to local governments, it is natural to implement a mandated cost reimbursement program. As I have indicated, from my experience in California, it was only after Proposition 13 became law that SB 90 became a functional tool and in effect a catalyst to helping California live within its means and protect the autonomy of local governments.

Mr. Chairman, I am convinced that the time is right for the implementation a federal cost reimbursement program. I applaud your continued efforts in this area beginning with the State and Local Cost Estimate Act of 1981. To date, your fiscal

notes process has been helpful to state and local jurisdictions. The proposed legislation would augment fiscal notes, bring real control to the growth of government and truly lead to new federalism.

I can well appreciate that the likelihood of full enactment of the "Intergovernmental Regulatory Relief Act of 1985" this session or even this Congress is probably unrealistic. However, I want to assure you of my commitment to your efforts to see this legislation proceed. There has been some mention that you may pursue Title I of S. 483 independently as an interim to full reimbursement. I support such action because any preliminary study which would outline in greater detail the ramifications of federal reimbursement would be most helpful.

Such a comprehensive analysis of the economic costs, noneconomic costs and additional direct costs which have been incurred or which will be incurred by State and local governments in complying with intergovernmental regulations as provided for in Title I is an important first step in understanding the need for this legislation. Such a report will focus Congressional attention not just on the potential impact of federal mandates but will require analysis—in greater detail and accuracy than we presently have—of future impacts.

As a result of Title I. Congress will ultimately have a more keen appreciation for the actual use of federal dollars and whether they are meeting intended objectives. Further, it will help Congress to reform its lack of realism by working to slow further regulatory proliferation as well as bringing relief, much deserved relief, to those who labor at the State and local level. With high budget deficits, Title I will offer new insight to potential programs and in effect be an obstacle to new mandates that are not high priorities.

Mr. Chairman, I believe that the time has come for Congress to implement a Federal Cost Reimbursement Program. The fiscal note program is an important start and implementation of Title I of S. 483 would lead to an even greater appreciation of the financial burden Congress imposes on the other levels of government. As Congress continues to address this important need, I would ask my colleagues to remember that while California's program has been successful recently, this progress has evolved over time. The California system of mandate reimbursement works but it too can and will continue to be improved. The first step toward California's successful program was action by the legislature.

With greater responsibility and accountability of the federal regulatory process, I am convinced that our nation's intergovernmental processes will reach a new, progressive level of cooperation, and interaction that will ultimately result in a renewed and revitalized federalistic system that is better able to meet the diverse and ever-changing needs of each level of government as they interact to meet collectively the needs of the public at large.

Again Mr. Chairman, I want to congratulate you on your efforts to make mandate reimbursement a reality and I want to pledge my support to the passage of such legislation.

Senator DURENBERGER. We will now hear from a panel of experts. First, John Shannon from the Advisory Commission on Intergovernmental Relations; then Prof. Adam Rose of West Virginia University, coauthor of a path-breaking National Science Foundation report on Federal and State mandates on local governments; and Michael Fix and Thomas Mulier of The Urban Institute, whose research several years ago for the Joint Economic Committee produced some of the first reliable estimates of the actual monetary costs being imposed on local governments by Federal mandates.

Gentlemen, would you come up to the witness stand. Thank you all for being here and sharing your expertise with us.

Our usual ground rules are a maximum of 10 minutes. Your full statements will be made part of the record.

We will begin with John Shannon. Welcome, John.

**TESTIMONY OF JOHN SHANNON, EXECUTIVE DIRECTOR, ADVISORY COMMISSION ON INTERGOVERNMENTAL AFFAIRS, ACCOMPANIED BY BRUCE McDOWELL; ADAM ROSE, PROFESSOR OF ECONOMICS, WEST VIRGINIA UNIVERSITY; AND MICHAEL FIX AND THOMAS MULLER, THE URBAN INSTITUTE**

Mr. SHANNON. Thank you, Mr. Chairman. I am accompanied this morning by my associate, Bruce McDowell. I will summarize hopefully in far less than 10 minutes the points made in the prepared statement.

As far as title I is concerned, we view that effort as helping to solve some of the rather serious methodological difficulties that arise when estimating State and local costs of intergovernmental regulations. Certainly the proposed legislation, set out in title I can be considered as a first step toward providing the experience needed to establish a smoothly-operating reimbursement process.

To help improve the reimbursement process that is set forth in title II, we suggest, first, that the Congress itself, rather than CBO, be made the central decisionmaker about the adequacy of reimbursement levels, but to do so in a manner that prevents Congress from easily defeating the very purpose of the legislation in the heat of the political moment; second, to provide for a more open and politically accountable consideration of the available estimates; and third, to provide a stronger institutional basis for developing the relevant fiscal facts on reimbursement.

This revised process which I tract out in much more detail in my paper, with superior technical estimating and more thorough political screening, and with ultimate congressional authority over reimbursements, would recognize the political nature of what is being attempted in S. 483.

Reimbursing States and localities for the cost of complying with Federal regulations is a vastly more complex task than the somewhat analogous task of making payments in lieu of property taxes. It is also a task that has thus far proven to be beyond the ability of Congress in most instances.

I will not go into the detailed recommendations, but I would like to make one other major point about title II. In my estimation, Mr. Chairman, it is much too ambitious. It seeks to have the national Government reimburse not only for new mandates but to go back into history and try to even the scales on old mandates.

When our Commission took a hard look at this issue not long ago, we came to the conclusion that it would be too ambitious to try to do both simultaneously, so the Commission threw its full support behind a process that would reimburse for future mandates, from here on out, but would not attempt, at least initially, that much more formidable task of going back and trying to even the scales on all of the regulations throughout the Federal process.

Part of that judgment, obviously, was a political decision, that the chances of getting a bill through the U.S. Congress would be a lot easier if it just called for reimbursement of new mandates. But if the authors attempt to get the Congress to try to reimburse for all the old mandates, it would certainly make the task much more difficult.

55-065 O - 86 - 4

And the other is the technical problem. We are just beginning to sort out all of the factors, and it is much more difficult to go back into history and do that type of a sorting-out process than it would be on new mandates.

Mr. Chairman, that concludes my remarks. Thank you for your consideration.

Senator DURENBERGER. Thank you, John.

Dr. Rose, you are next. Thank you for being here.

Mr. ROSE. Thank you, Senator Durenberger. I am honored to appear before the subcommittee to provide input to the discussion of the Intergovernmental Regulatory Relief Act of 1985. While at the University of California, Riverside, I took part in a study on intergovernmental mandates, along with my colleagues Catherine Lovell, Max Neiman, Robert Kneisel, and Charles Tobin, that was sponsored by the National Science Foundation. I would like to summarize some of the major findings of the study that pertain to the identification of mandates and the estimation of their costs.

The definition put forth in our study was: A mandate is any responsibility, action, procedure or anything else that is imposed by constitutional, legislative, administrative, executive, or judicial action as a direct order or that is required as a condition of aid.

It may appear at first that the degree of compulsion differs significantly between direct orders and conditions of aid. However, when one considers the opportunity cost of foregone Federal assistance, the gap narrows significantly.

While every mandate involves a requirement, there are several other characteristics which vary accross mandates and provide some insight into their differential fiscal impacts. These major distinctions are:

One, whether the mandate is a direct order or condition of aid;

Two, whether the mandate is a prescription or proscription;

Three, whether the mandate applies to outputs or applies to inputs;

Four, whether the mandate applies to a single government program or cuts across programs generally; and

Five, whether the mandate addresses performance or procedure.

Using our definition and typology as guidelines, research team assistants combed through the 175 volumes of the Code of Federal Regulations and interviewed local officials. I should point out that the study also examined the State mandates on a city and county government in each of five States. I won't address this aspect of the study in my oral comments, but not that some of the State mandates were simply passthroughs from the Federal Government.

In all 1,260 Federal mandates on local governments were identified. As to some of the major distinctions:

One, direct order mandates numbered only 223 of the total 1,260.

Two, only 15 of the mandates were proscriptions; that is, constraints on revenue gathering or expenditures.

Three, those mandates cutting across more than one program numbered 299.

Four, program output mandates numbered 208.

Also of interest was the finding that 913, or nearly 75 percent, of the Federal mandates had been initiated after 1970. Finally, let me note that 1,205 of the mandates originated from administrative reg-

ulations, only 14 from executive orders, and only 41 from laws passed by Congress.

The area of cost estimation of mandates is especially difficult, but our methodologies, together with methodologies developed subsequently and established governmental accounting procedures, should allow for good approximations of "direct costs." Some additinal conceptual work and accounting innovations should make it possible to assess other types of costs for most mandates. The estimation effort would also be greatly enhanced if it represented a joint Federal, State, and local effort.

Let me offer some of the study findings with respect to costs, keeping in mind that they represent the impressions of chief administrative officers of local governments and our field researchers and are not purely scientific.

When asked to assess the percent of the total jurisdiction budget attributable to expenditures on mandates, both Federal and State, for our sample if five cities and five countries, the estimates ranged form 10 to 80 percent. Most of the estimates grouped at the higher end of the scale and there was general agreement between CAO's and field researchers. It should also be noted that the study found that the Federal Government paid for mandated expenditures in 45 percent of the cases.

At this point I would like to point out some of the subtleties involving mandate costs that are needed to interpret these results. The analyst should:

One, distinguish between expenditures and costs, the latter representing the amount over and above what the local government would spend on its own for the input or output affected;

Two, acknowledge the existence of a large number of indirect cost categories, including costs to the private sector, indirect efficiency changes and externalities;

Three, acknowledge the benefits from the goods and services improved or provided through mandating, and also to be careful to subtract out the benefits from goods displaced by mandates;

Four, assess the degree of compliance with mandates to obtain a better measure of potential cost.

Let me offer one final point about costs from an economist's standpoint. Even the distinctions made above do not get at the core definition of costs; that is, the utilization of basic productive resources. If the Federal Government shifts the responsibility for administering a regulation back on itself, or reimburses local units, the situation involves a transfer payment rather than a real resource savings.

One hears a great deal about the dichotomy between the Federal Government and local governments, but the dichotomy breaks down at the more fundamental level of the taxpayer. There really aren't two groups of citizens, one local and one national; each citizen/taxpayer simultaneously belongs to both. if he doesn't pay for mandates directly through local taxes, he will pay via Federal taxes. The distinction here is one of relative amounts and the degree of interregional transfers, not necessarily full direct costs. On this score, some citizens will be better off as a result of the proposed legislation and some will be worse off.

However, there is one important part of the bill where real cost savings are promoted and everyone in the country should gain. This pertains to measures to more effectively implement mandates. The vast majority of Federal mandates are procedural, those telling local governments exactly how to perform some task. They thereby limit choice and possibly stifle innovation. More flexible approaches such as performance standards, marketable permits, et cetera, should result in real cost savings.

Thank you.

Senator DURENBERGER. Thank you very much.

Dr. Muller and Mr. Fix, do you have a joint statement or are you going to share the time?

Mr. MULLER. Mr. Fix will make the statement.

Mr. FIX. I will make the statement and we will both respond to questions.

Senator DURENBERGER. Thank you very much.

Mr. FIX. Mr. Chairman, I very much appreciate the opportunity of appearing before you today to discuss the Intergovernmental Regulatory Relief Act of 1985. With me is Dr. Muller, a principal research associate of The Urban Institute and an author of our 1979 study for the Joint Economic Committee of Federal mandates.

My remarks will be brief. Dr. Muller and I will then answer questions as you see fit.

The main thrust of my remarks will be to summarize a study which we did for the JEC in 1979 a study which provided concrete cost estimates of the fiscal impact of six Federal mandates on seven urban jurisdictions. I will then offer a number of recommendations focusing only on the cost accounting requirements set out in section 102 of S. 483.

First, though, I would like to reflect for a minute on the need for such legislation in an era marked both by strong congressional and executive interest in regulatory relief and New Federalism. Why in such an era do we need legislation as S. 483?

I think you will agree with me that despite the fact that State and local governments have been accorded significant regulatory relief over the past 4 years by the Reagan administration, that dollar savings which have been generated by regulatory change appear to have been more than outweighed by pending and achieved budget cutbacks which affect State and local governments.

Moreover, the most significant regulatory savings which have been generated over the course of the past 4 years have been one-time savings, usually associated with capital expenditures. An example would be the rescission of regulations commanding that public transit systems be made fully accessible to the disabled.

But while the bulk of regulatory savings come from the elimination of one-time costs, budget reductions have typically eliminated sources of ongoing support for State and local governments. Here an example would be reduced operating subsidies for mass transit.

A second reason why we believe S. 483 remains a timely bill is that, for the most part, regulatory changes have been achieved administratively. They have not been achieved legislatively. Hence, old regulatory regimes could be reinstituted, and new expensive regulatory regimes created by any future administration which

tends to be more activist than the current one. Moreover, we would contend that the temptation to achieve Federal policy preferences by spending State and local dollars will ensure over all administrations.

Third, despite the fact that the courts have supported a number of the most important regulatory relief actions which touch State and local governments, a very important recent decision by the U.S. Supreme Court made clear that the court is unwilling to extend constitutional protection to federalism. The decision, in *Garcia* v. *San Antonio MTA*, requiring that the public transit authorities subscribe to the Fair Labor Standards Act, only reinforces, we contend, the legal vulnerability of State and local governments to Federal mandates. Thus, it seems to us that the courts cannot be expected to resolve some of the toughest fiscal, institutional, and political issues raised by intergovernmental regulations.

Let me turn now briefly to the approach and results of our study for the Joint Economic Committee.

As I say, we assessed the direct incremental cost of six Federal requirements as they were applied in seven urban jurisdictions. Among the most notable regulations examined were handicapped education requirements, wastewater treatment standards, bilingual education requirements, and the Davis-Bacon Act standards.

In short, what we tried to do is determine the share of local program expenditures attributable to these mandates which exceeded what would have been spent in the absence of Federal regulations. What did we find?

First, we found that mandates are expensive. Per capita costs of just these six regulations averaged $25 per resident across the seven jurisdictions studied, roughly an equivalent amount to their average 1978 receipts from Federal general revenue sharing.

Our second major finding was that these mandates imposed widely varying impacts on the seven jurisdictions, with costs ranging from $51.50 per capita in Newark, NJ, to $6 in Burlington, VT. This meant that the cost of Federal mandates does not fall evenly across all jurisdictions. Indeed, in some instances the highest costs were imposed on just those jurisdictions least able to pay.

Let me note, though, a couple important limits to our study. First, we only looked at regulations which had been or were being implemented at the time of the study. We acknowledge that making calculations of compliance costs is far more difficult when rules exist only in proposed form.

In addition, we did not take on the extraordinarily difficult analysis associated with calculating indirect costs or benefits, both of which are called for under the current version of S. 483.

Finally, I would like to offer some brief recommendations on the counting of intergovernmental regulatory costs set out in section 102.

We believe that the kind of regulatory cost accounting set out in that provision is feasible. However, we acknowledge that it would require a substantial effort. Extrapolating from our own experience in this field, in a kind of back of the envelope fashion, we believe that a realistic version of the study set out in S. 483 would probably cost from $4 to $8 million; and as the work of our California colleagues makes absolutely clear, such a study could not hope to

encompass the full range of intergovernmental regulations which exist but would, rather, have to focus on some subset of those rules.

Further, quantifying indirect costs and quantifying benefits just doesn't appear to us realistic, although we think drawing a good taxonomy on benefits and direct costs would be an extremely valuable exercise.

To conclude, we believe that the study would have to rely on your State and local government partners for gathering data on regulatory costs, with the Federal Government developing a study and sample design and auditing State collection procedures and results for uniformity and accuracy.

Finally, given the clear thrust of S. 483, it would be ironic indeed if participating State and local governments were not reimbursed for their contribution in this effort.

Thank you very much.

Senator DURENBERGER. Thank you.

Would you make clear for me again, when you were using the $4 to $8 million figure on the research, if I got that right——

Mr. FIX. Yes, $4 to $8 million.

Senator DURENBERGER [continuing]. What do I get for that?

Mr. FIX. I can tell you because I've broken that out.

First, one would have to develop a sample of the regulations to be studied.

Second, a sample of jurisdictions across the country will have to be developed which is stratified according to some logical variables, such as by region, by comparative fiscal health, by climate, by environmental conditions, by population size, and so on.

A useful sample would involve approximately 100 different sites, and require 5 to 10 weeks per site of a senior analysts' time at a cost of roughly $200 per day.

Senator DURENBERGER. What is the product going to look like?

Mr. FIX. What will it look like?

Senator DURENBERGER. Yes. For example, let us say we have a hearing on your finished study. What in 10 minutes are you going to tell us?

Mr. FIX. I think that the product will provide a far better assessment of intergovernmental regulatory cost impacts and how they vary across jurisdictions than you have today. We really don't have a very refined vision of cost impacts, particularly when you get below the large urban areas. You have Ed Koch's article on New York City, "The Mandate Millstone," you have our study, in which we focussed on major urban areas. I am not familiar with the California study. But what you will get is a far broader, more representative view of what the regulatory impacts are for a broader group of jurisdictions than has been examined so far. That will be especially true if you really enlist the power of the Federal Government, State and local governments, across 100 different sites.

Senator DURENBERGER. I believe that you or one of the witnesses talked about the handicapped regulations. What might you be able to tell me about such a regulation at that hearing?

Mr. FIX. Yes. What you might find is in Philadelphia, before the rescission of the section 504 "full accessibility" regulations was undertaken in 1981, that the projected cost of compliance with Federal regulations would have been something on the order of $200 mil-

lion to make the transit system's, subways and buses conform with the law.

But what happened when those regulations were rescinded? A dramatic change has taken place. What one would find is that current costs of compliance are something on the order of $3 million per year which is subsidized by about $200,000 from the State level. Thus the actual current costs of compliance was comparatively low for what is considered to be a very expensive Federal regulation.

In any case the results of such a study would provide a much more fine-grained perspective on the issue.

Senator DURENBERGER. Then let me take that a step further. If you lay an analysis on an existing set of mandates and you sample a few Philadelphians, you can come up with $200 million. And I know you are going to go through different kinds of communities. That will tell you in effect how at a given point of time some subset of local governments are approaching the problem.

If we are talking about a mandate which says you will follow a particular process, cost estimation will be relatively straightforward. All you have to do, for example, is take the labor and material, construction costs in Philadelphia, as well as the administrative costs and I guess that would give you a total cost in dollars.

But what about when you move from Philadelphia to Newark where somebody finds a much better way to do it. They can do the same thing for a third of the price.

One of the things that bothers me in the notion of reimbursing for these mandates is that we fix a flat fee for this particular new regulation and we spread it out over America, the way we do low-income energy assistance money, and we lose all the incentives in those communities for doing something better.

Where am I missing the point?

Mr. MULLER. I believe you are not missing the point. I think you are bringing up an important issue. But as one would visualize such an analysis, it would indeed compare the method by which various jurisdictions are complying with the requirements.

One of the ideas would be, in any type of analysis, to come up with the most efficient method that local governments or State governments have found to comply with the regulation and use that as the standard. So if there were to be reimbursement, the standard would be the most efficient way found to deal with the particular regulation, not with the average cost but with the most efficient manner in which that mandate was carried out in the sample that would be examined.

We believe a sample of 100, frankly, is large enough to provide good insight into what is going on.

Senator DURENBERGER. That is still time fixed—1983 data to do a 1985 project.

Mr. MULLER. You will always have that. There is no way to avoid that. But we believe that a lag such as that would not substantially affect the results. We don't believe a 1-year difference would really bias the results substantially.

Senator DURENBERGER. Let me ask you, John, and Dr. Rose, where does all of this we are talking about fit into the larger picture of intergovernmental priorities? Obviously, I am concerned about the camel's nose coming up under the tent with the *Garcia*

case. In fact there are probably some other cases coming up out there in terms of the legal liabilities of local government. Is that where we should be concerned? Where in the healthy future of the intergovernmental system does this mandate thing come down?

If I think back to the seventies, Pete Wilson became mayor of San Diego, people saw the mountain of Federal regulations getting higher and higher. People were saying the system is going to sink under the weight. I ran for the Senate on the theory that if I wanted to change public policy I had to go where the money was. I had to go to Washington. Is that still true?

I am wondering now where the rationale and the importance of this effort is in 1985. John?

Mr. SHANNON. I think that the spirit and the purpose of this legislation is right on the mark. If there is any persuasive fear now throughout the entire intergovernmental field it is this, that the national Government is retreating along the entire Federal aid fund. And there is a pervasive fear amongst State and local governments that where in the old days they got mandates and money, now it is mandates without money, and that the various interests will urge Congress to flex its regulatory muscles and to order State and local governments to do by regulatory fiat what in the old days they accomplished with cash as well as fiat.

Senator DURENBERGER. John, you are also a constitutional expert. Wouldn't you make an argument, though, that that is just part of the evolutionary process of the constitutional system in this country? We are now going back to the States deciding who gets unemployment compensation and who doesn't. Somewhere in the previous 200 years we decided as a nation that an unemployment compensation system of some kind was really important to the Nation, not just to Wisconsin, which happened to be the first State that had it, but to the Nation.

We have decided a whole lot of other things: equal rights, civil rights, and environment, for example. Now we are going back to the States and saying now that we have discovered all of these wonderful goods, why don't you take them over? We will keep the national mandate here to make sure you do it, but you run the system from now on.

Mr. SHANNON. There are some who will argue that federalism is finance. I tend to share that view.

When the Congress is in a relatively easy fiscal position, it will obviously open up the grant money to help, in many cases bribe, State and local governments to do what they wouldn't do on their own. Now, as the Federal Government is under increasing fiscal constraint, the question will arise—how far should the Federal Government move strictly with regulatory power?

But the critical issue from my point of view, as far as congressional attitudes on what needs to be done or not, is to make it easier for the Congress to say no. And in a period of fiscal constriction, it will be easier for Congress to say no to the interest groups that come up saying do this and do that if Congress can say to the interest group look, if we do what you want us to do, first we are going to put a fiscal note on it, and second, we here at the national level will have to reimburse the State and local governments for this regulatory action. And it will make it much easier for the

Members of the Congress to say no if there is a fiscal note and a requirement for reimbursement. Now I am talking about new mandates, of course.

That in itself I think will really sort it out. If the Congress really thinks that some action is so vital to the national interest, it is going to have to put its money where its mouth is. This is the essential aim of this piece of legislation, as I see it, and it fits beautifully into a period of fiscal constraint. It will make it easier for the Congress to say no to a myriad of demands that it flex its regulatory muscles.

Senator DURENBERGER. Dr. Rose, a comment?

Mr. ROSE. I agree with Mr. Shannon to a great extent. To me, the primary benefit of the bill is that it heightens awareness of the fact that someone has to pay the bill for legislation that reaps benefits at the local level.

Behind all of this is the fact that the Federal Government is strapped for money, but so are State and local governments. Again I go back to my statement and say that rather than looking at the bill necessarily as a way of constraining Federal regulation, much of which may have beneficial impacts, I look at it as a way of making legislation more cost effective.

In other words, this bill will penalize the Federal Government for passing legislation in a manner that is costly to local governments—that doesn't take into account extra expenditures local governments might incur if legislation is too rigid.

Senator DURENBERGER. Dr. Muller.

Mr. MULLER. Just to add one point here. One of the results of our own study, and it is consistent with other work, is that the costs of regulations are not distributed evenly across the country. So we have certain equity questions. For example, we found some regulations affected older cities disproportionately because of costs. This, of course, was because of the particular nature of the jurisdiction and the regulation.

One concept, of course, would be that if a particular requirement is in the greater national interest, the payment by the Federal Government would distribute the costs more evenly across all residents rather than penalizing some jurisdictions relative to others. So there is an equity element I think one needs to take into account here.

Senator DURENBERGER. Gentiemen, thank you very much for your testimony. I appreciate it.

[The prepared statements of Dr. Rose and Messrs. Fix and Muller follow:]

# IDENTIFYING INTERGOVERNMENTAL MANDATES AND ESTIMATING THEIR COSTS

Prepared Statement

by

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Presented to the

Subcommittee on Intergovernmental Relations

Hearing on the Intergovernmental Regulatory Relief Act

May 14, 1985

## I. INTRODUCTION

A great deal of controversy surrounds intergovernmental regulations, or mandates. This paper is intended to contribute to the resolution of this controversy by providing some insight into the identification of mandates and the estimation of their costs. The paper summarizes and extends a National Science Foundation sponsored study carried out at the University of California, Riverside.*

## II. IDENTIFICATION OF MANDATES

### A. Definition

The definition set forth in the study was:

> A mandate is any responsibility, action, procedure or anything else that is imposed by constitutional, legislative, administrative, executive or judicial action as a direct order or that is required as a condition of aid.

In the case of a direct order, the key to identifying a federal action as a mandate is wording such as "must" or "shall". In the case of a condition of aid this same wording is important only if a local jurisdiction requests federal assistance. While the degree of compulsion between the two categories may appear to differ dramatically, Neiman and Lovell (1981) point out that the opportunity cost of foregoing aid moves many condition of aid mandates into the middle of a continuum between the two extremes. From

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*The study, Federal and State Mandating on Local Governments: An Exploration of Issues and Impacts, was performed by Catherine Lovell (principal investigator), Robert Kneisel, Max Neiman, Adam Rose and Charles Tobin. It will be referred to henceforth as Lovell et al. (1979). Additional references will be made to subsequent published papers emanating from the research, that may be more accessible to the reader. This study is broader than the issues addressed here, having contributed: an operational definition of mandates, a basic typology, a theoretical model of impacts, a mandate inventory, a cost-estimating methodology, an evaluation of mandate cost; and a discussion of broader issues involving mandates. It also applied to both federal and state mandates on local government.

another perspective a condition of aid mandate might be viewed as a matching grant.

B. Mandate Typology

While every mandate involves a requirement, there are several other characteristics which vary across mandates and provide some insight into their differential fiscal impacts. These characteristics are presented as sets of basic dichotomies in the left hand column of Table 1.

TABLE 1. MANDATE TYPOLOGIES

| Basic Characteristics | UCR Study Characteristics |
|---|---|
| Direct Order vs. Condition of Aid | Direct Order vs. Condition of Aid |
| Prescription vs. Proscription | Requirement vs. Constraint |
| General vs. Specific | Horizontal vs. Vertical |
| Output vs. Input | Programmatic vs. Procedural |
| Performance Standard vs. Procedural Requirement | |

The first dichotomy has already been discussed. The second distinguished between those mandates which prescribe an action from taking place (e.g., providing access for the handicapped) and those which proscribe an action from taking place (e.g., setting a limit on property tax rates). General mandates refer to those which apply across several local departments or services, as opposed to those that are service specific. Output mandates refer to the final quality or quantity of local services, while input mandates pertain to basic materials or support services. Performance Standards refer to mandates that simply require the attainment of some quality or quantity level without specifying how this is to be accomplished.

Procedural mandates specify exactly how an activity is to be carried out.

The typology actually used in the study is listed in the second column of Table 2 and represents a variation of the basic dichotomies with regard to detail and terminology. The typology served as a basis for classifying and tabulating mandates and as a way to distinguish among basic cases in a theoretical model.

C. The Federal Mandate Inventory

Using the mandate definition and typology as guidelines, members of the research team combed through the 175 volumes of the Code of Federal Regulations and interviewed local officials. The study also examined state mandates on a city and a county government in each of five states. I won't address this aspect of the study, but I should point out that some of the state mandates were simply pass-throughs from the federal government.

In all, 1260 federal mandates on local governments were identified, through the year 1978. The inventory is listed according to basic characteristics in Table 2. The major findings are:

1. The vast majority of federal mandates are conditions of aid;
2. Nearly all federal mandates are requirements, rather than constraints on revenues or expenditures;
3. The vast majority of federal mandates apply vertically, i.e., to individual programs;
4. The vast majority of federal mandates are procedural.

Also of interest was the finding that 913, or nearly 75 percent, of the federal mandates had been initiated after 1970. Finally, let me note that 1205 of the mandates originated from administrative regulations, only 14 from executive orders, and only 14 from laws passed by Congress. Agencies within the Department of Housing and Urban Development and the former Department of Health, Education and Welfare were responsible for over two-

TABLE 2. THE FEDERAL MANDATE INVENTORY BY MAJOR CHARACTERISTIC

| Characteristic | Number | Percent |
|---|---|---|
| Direct Order | 223 | 18.0 |
| vs | | |
| Condition of Aid | 1036 | 82.0 |
| Requirement | 1245 | 98.6 |
| vs | | |
| Constraint | 15 | 1.4 |
| Horizontal | 299 | 23.7 |
| vs | | |
| Vertical | 961 | 76.3 |
| Programmatic | 208[a] | 16.8 |
| vs | | |
| Procedural | 1032[a] | 83.2 |

Sources: Lovell et al. (1979); Neiman and Lovell (1982); Lovell and Tobin (1981).

[a]The total equals 1045 since constraint mandates are inapplicable.

thirds of the condition of aid mandates. The distribution of direct order mandates was much more even across Executive departments and agencies.

Additional insight into mandates can be obtained from the disaggregations presented in Table 3. A breakdown of procedural mandates in the top half of the table indicates a large number of performance mandates--nonfiscal mandates that are antecedent to a program quality or quantity goal. A significant number of procedural mandates are clerical in nature (reporting and record keeping). A breakdown of mandates by function (bottom-half of Table 5) reveals that two areas--community development and health--are subjected to more than half of all federally imposed intergovernmental regulations.

## III. THE COST OF MANDATES

### A. Cost Classification

In standard accounting practice, costs are associated with out-of-pocket expenditures as well as implicit items relating to overhead. Here, a broader definition based on economic, or opportunity costs, is invoked. Economic costs include: (1) the aforementioned explicit and implicit components, (2) internal losses in efficiency to the unit of government responsible for carrying out the mandate, (3) similar inefficiency costs absorbed by other governmental units or the private sector indirectly involved in compliance, and (4) externalities suffered by related or unrelated units of government or members of the private sector. Note that the components (2) through (4) are difficult to assess because they often are "invisible" or can only be remotely associated with the mandate. It is also possible that a mandate will directly or indirectly inspire some savings, and hence mandates may impose either positive or negative net costs.

Cost categories are summarized in column 1 of Table 4 and an evaluation of their availability is presented in column 2. Of course, not all

TABLE 3. THE MANDATE INVENTORY BY PROCEDURE AND FUNCTION

| | Number | Percent |
|---|---|---|
| Procedure: | | |
| Reporting | 158 | 15.3 |
| Performance | 463 | 44.9 |
| Fiscal | 157 | 15.2 |
| Personnel | 120 | 11.6 |
| Planning and Evaluation | 77 | 7.5 |
| Record Keeping | 57 | 5.5 |
| Total | 1032 | 100.0 |
| Function: | | |
| Agriculture | 1 | 0.1 |
| Community Development | 355 | 28.2 |
| Community Services | 45 | 3.6 |
| Education | 80 | 6.3 |
| Environment | 100 | 7.9 |
| General Government | 204 | 16.2 |
| Health | 330 | 26.2 |
| Public Assistance | 18 | 1.4 |
| Public Protection | 33 | 2.6 |
| Recreation/Culture | 17 | 0.6 |
| Transportation | 38 | 3.0 |
| General Regulation | 13 | 3.9 |
| Total | 1234[a] | 100.0 |

Sources: Lovell et al. (1979); Neiman and Lovell (1982); Lovell and Tobin (1981).

[a]Some mandates were not assigned to specific functional areas.

TABLE 4. COST CATEGORIES ASSOCIATED WITH MANDATES

| Cost Category | Availability of Data and Tractability of Estimation |
|---|---|
| 1. Cost to the Unit of Gov't Providing the Increment to the Mandated Good | |
| A. Direct | |
| (1) Explicit (e.g., salaries, materials, overhead) | readily available |
| (2) Implicit (e.g., equipment depreciation, auditing services) | estimable thru standard techniques |
| B. Indirect (efficiency change) | |
| (1) Explicit (e.g., salaries, maintenance, overhead) | can isolate with some difficulty |
| (2) Implicit (e.g., congestion delays, changes in productivity) | rough approximation possible |
| 2. Cost to the Rest of Government | |
| A. Indirect (normal support) | |
| (1) Explicit (e.g., salaries, materials, overhead) | readily available |
| (2) Implicit (e.g., equipment, depreciation, auditing service) | estimable thru standard techniques |
| B. Indirect (efficiency change) | |
| (1) Explicit (e.g., salaries, maintenance, overhead) | can isolate with some difficulty |
| (2) Implicit (e.g., congestion delays, changes in productivity) | beyond the scope of this study |
| C. Externality | |
| (1) Explicit (e.g., salaries, maintenance, office supplies) | estimable with substantial effort |
| (2) Implicit (e.g., congestion delays, changes in productivity) | rough approximation possible |
| 3. Cost to the Private Sector | |
| A. Indirect (required support) | |
| (1) Explicit (e.g., travel expenses, salaries, office supplies) | rough approx. possible from gov't |
| (2) Implicit (e.g., waiting time, depreciation) | rough approx. possible from gov't |
| B. Indirect (efficiency change) | |
| (1) Explicit (e.g., salaries, maintenance, overhead) | beyond the scope of this study |
| (2) Implicit (e.g., congestion delays, changes in productivity) | beyond the scope of this study |
| C. Externality | |
| (1) Explicit (e.g., salaries, maintenance) | rough approx. possible from gov't |
| (2) Implicit (e.g., congestion delays, changes in productivity) | beyond the scope of this study |

Source: Lovell et al. (1979).

of the categories are pertinent to each mandate, but they are all included here for the sake of completeness. Also the total level of government expenditures in a jurisdiction will not be raised by the full amount of the cost of a mandate, due to the cost savings noted earlier, displacement of other services, and partial or full reimbursement.

1. Costs to the unit of government charged directly with the mandate.

Direct explicit costs include the most obvious aspects, such as compensation for labor, materials, and items often referred to as overhead, such as office supplies. Typically these are line items in government budgets, and are likely to represent the majority of the cost of most mandates.

Direct, implicit cost items refer to those services of general government prorated to each department and can, through some standard estimating techniques, be assigned to output or input categories as needed. Examples are auditing and motor pool. Following standard government accounting practices, services of general service departments such as personnel or county supervisors are not included.

The indirect efficiency change category is likely to vary considerably between mandates. Costs of general disorganization may result from an interference with established working practices, changes in morale and distraction of managerial attention. Some of these costs may manifest themselves explicitly in terms of additional salaries or increased maintenance. However, more subtle forms of indirect efficiency loss, such as congestion delays, are likely to be most prevalent. Note also the possibility of efficiency gains as an intended or accidental result of a mandate. Mandates which provide a safer environment, salary increases or additional fringe benefits may increase the productivity of government workers.

2. Costs to the rest of government

Normal indirect costs are those attributable to support services from

an office of government not responsible for the mandate. For example, the airport authority may ask the street department to perform the paving of a mandated runway safety zone and a rerouted perimeter road. The street deparment's cost of materials, employment compensation, etc., would be included as an explicit cost. Implicit costs would also be the same as those presented as examples for the primary unit of government. Indirect costs due to changes in efficiency would also be similar but, in most cases, of a smaller magnitude.

Externalities represent costs imposed on the rest of government and the private sector through direct, accidental interactions rather than direct working arrangements. The governmental units are not necessarily those offering support services, but may only be related by factors such as close physical proximity, or common supervisory or staff personnel. Implicit versions of these costs may result because congestion or noise from increased caseloads may be bothersome to neighboring departments and result in productivity losses. Explicit costs may show up as increased maintenance or demands for office supplies. Note also that positive externalities may occur.

3. Costs to the private sector

Often a government mandate will directly or indirectly result in private sector costs as well. Stiffened requirements to certify eligibility for welfare or subsidies may require citizens or organizations to seek legal counsel or increase a legal staff. Mandates may require private citizens to appear in person to conduct certain business and, thus, incur additional travel expenses. Implicit costs involve, for example, valuation of waiting time according to foregone wages or leisure activities. Indirect efficiency change refers to the ramifications of the disturbance to private contractors or "customers" of a given government service due, for example, to excessive

paperwork requirements.

The private sector may also be affected by external economies and diseconomies of the kinds described above. Finally, note that the imposition of user charges by local government to recoup some of its mandated expenditures represents an out-of-pocket expense to the private sector, but not a true social cost. It is merely a transfer from one segment of society to another and does not involve any resource costs.*

B. Cost Data Availability

There is a wide gap between the data needs discussed in the previous section and the data availabilities. Much of this gap is due to the problems of determining implicit costs and externalities in general. Given the overlap within and among units of government and the private sector, total costs of any single mandate would have to be gathered from different reporting units and then aggregated.

The extent of the costs and ease of estimation depends a great deal upon the unit of analysis and mandate type. If a governmental unit has been set up for the sole purpose of carrying out a mandate, arriving at a total primary cost will be easier, since all explicit items will be readily available from most budget documents. On the other hand, for a vertical procedural mandate, it may be difficult to assign even direct explicit costs, while implicit costs and efficiency effects in general will be especially difficult. This section describes those aspects of government accounting which make it difficult to obtain the data needed and those which can be capitalized upon to successfully complete a mandate cost study.

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*Additional impacts related to costs included possible changes in economic welfare due to budget reallocation. These impacts and the cost impacts discussed in this section may also set in motion a significant chain of ripple effects, affecting the entire economy of a region (see, e.g., Rose, 1983).

1. Budgets

Originally the main purpose of budgeting was control and accountability. Since then, however, other rationales have been put forth and the budgetary process refined accordingly. These include seeing the budgetary process as a management tool, forum for communication, means of evaluating performance, and a framework for the pursuit of objectives such as efficiency and equity. These more abstract notions have today filtered down to the practitioner's level. Although budgets have many uses, they don't, except in rare cases, provide useful information about mandate costs. Budgets are usually presented in a line item format not generally organized to show expenditures by either mandated programs or mandated procedures.

In some jurisdictions, it may be possible that information can be obtained from preliminary budget requests and internal departmental records. More important are the skills developed and methods used by department personnel in the budget preparation process, which can be applied to ad hoc requests for information on mandates.

2. Formal Reimbursement Processes

A second category of cost information sources relates to official federal or state reporting procedures. These are themselves conditions of aid mandated procedures which prescribe reimbursement methods. With respect to reporting to the federal government, they consist of cost allocation plans, often referred to as the A-87 or FMC 74-4 process (see U.S. HEW, 1976). Analogous reporting to states varies considerably by state when it exists at all. One example of reimbursement procedure is the SB-90 (mandate reimbursement) program in California.

The FMC 74-4 procedures have been issued to provide for a more uniform way of determining the costs of federally assisted programs. They focus on the determination of indirect costs and establish a format for cost-allocation

plans. The FMC 74-4 process establishes definitions of allowable cost items, cost rates, and output measures. The standardized procedure applies to many federal procedural mandates and some program mandates and can serve as the basis of uniform information, though aggregation by functional category may nullify some of its usefulness. The cost allocation plans are subject to government audit, thus promoting their accuracy. As in the normal budgeting procedures discussed earlier, the audit training this procedure provides may be as useful to the researcher's purposes as the actual reports.

3. Established Government Procedures

Underlying all local government accounting (in larger jurisdictions at least) are established professional procedures. The most basic of these are contained in the government accountant's "blue book" or Governmental Accounting, Auditing and Financial Reporting (see National Committee on Governmental Accounting, 1968). The "GAAFR" is not a source of information on mandated costs, but can serve the researcher as an authority on many difficult conceptual issues, definitions and procedures. It is applicable to internal audit reports as well as more aggregated budget documents. The GAAFR documents and can give the researcher some advance idea of what to expect in various jurisdictions. Although not a required format, the GAAFR is widely used and endorsed by most state governments for use by their counties, and similar pressure is exerted on cities to use it also. This significant standardization of accounting approaches and financial documents should greatly facilitate cross-polity data gathering and comparison. Revisions of the GAAFR (see National Council on Government Accounting, 1977) have further promoted this standardization by condensing procedures and channeling them in the direction of private industry practice.

C. Cost Estimation

The previous discussion focused on a direct empirical approach to evaluating mandate costs. However, a preferred starting point would be an underlying theory of local government decision-making, often referred to as a budget model. Crecine (1969) suggests that there are three major types of budget models: (1) optimization, (2) externally determined and (3) internal bureaucratic or problem-solving.* It is not the purpose here to identify the best approach, but simply to point out the options. In evaluating research on a related aspect of fiscal federalism, Whitman and Cline (1978) note that "....a poorly designed survey instrument lacking a well conceived conceptual framework can produce only ambiguous results." A budget model can provide useful guidance (e.g., pointing out substitution relationships as a clue to budget displacement) and can save resources by shifting the emphasis away from deterministic approaches (ordinary accounting) and toward inferential approaches (econometric models). The UCR/NSF study provided a first pass at a theoretical model of mandates (see Rose and Kneisel, 1979), but further work is warranted.

The study relied primarily on a direct empirical approach, however, to determine mandate costs. Research associates with a knowledge of a given local jurisdiction worked with local officials to complete a field research report for a sample of mandates.

The results can be quickly summarized though the reader is asked to keep in mind their impressionistic rather than scientific nature due to the time and resource constraints of the study. For example, when asked to assess the percent of the total jurisdiction budget attributable to expenditures on mandates (both federal and state) for the sample of 5

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*The reader is referred to Deacon (1978), Wilde (1972) and Crecine (1969) for a sample of each of the three approaches, respectively.

cities and 5 counties, estimates ranged from 10 to 80 percent. Most of the estimates grouped at the higher end of the scale and there was general agreement between Chief Administrative Officers and Field Associates. It should also be pointed out that the study findings indicated that the federal government paid for the mandated expenditures in 45 percent of the cases.

Even these simple estimates are not without their subtleties. The results need to be reinterpreted to take into account:

1. The distinction between expenditures and costs, the latter representing the amount over and above what the local government would spend on its own for the good or service affected;

2. Acknowledgement of the existence of a large number of indirect cost categories, including costs to the private sector, indirect efficiency changes and externalities;

3. Acknowledgement of the benefits from the goods and services improved or provided through mandating (also care to subtract out the benefits from goods displaced by mandates);

4. The assessment of the degree of compliance with the mandate to obtain a better measure of potential cost.

## III. CONCLUSION

One final point about costs is offered from an economist's standpoint. Even the distinctions made above do not get at the core definition of costs as the utilization of basic productive resources. If the federal government shifts the responsibility for administering regulation back on itself, or if it reimburses local units, the situation involves a transfer payment rather than a real resource savings. In the controversy over mandates one is drawn into viewing a dichotomy between the federal government and local governments, but the dichotomy breaks down at the more fundamental level of the taxpayer. There really aren't two groups of citizens, one local and one national; each citizen/taxpayer simultaneously belongs to both. So if he doesn't pay for mandates directly through local taxes, he

will pay via federal taxes. The distinction here is one of relative amounts and the degree of interregional transfers, not necessarily full direct costs. On this score some citizens will be better off as a result of the proposed legislation and some will be worse off. The result is difficult to evaluate because a sound criterion of interregional equity has never been formulated (see Rose, 1985).

However, there is one important area of the bill where real cost savings are promoted and everyone in the country should gain. This pertains to measures to more effectively implement mandates. The vast majority of federal mandates are procedural, those telling local governments exactly how to perform some task. They thereby limit the options and possibly stifle innovation. More flexible approaches, such as performance standards, marketable permits, etc., should result in real savings. Several examples of the implementation of these kinds of intergovernmental regulatory improvements in recent years are noted by Lovell (1984). A detailed analysis of how one of these innovative approaches works and of the savings it can provide is contained in Cass et al. (1982). Generalizing from these examples, the opportunities for regulatory innovation appear to be extensive.

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# Counting Intergovernmental Regulatory Costs

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Intergovernmental Relations Subcommittee
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May 14, 1985

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Mr. Chairman and Members of the Intergovernmental Relations Subcommittee, we very much appreciate the opportunity to testify before you today on S.483, the Intergovernmental Regulatory Relief Act of 1985. As the members of this committee well know, efforts to understand the impact of the explosion in federal regulations which has taken place during the past two decades have generally overlooked the effect of regulatory growth on state and federal governments.

In 1979, The Urban Institute undertook a modest exploratory effort under the sponsorship of the Joint Economic Committee of the Congress to understand the character of federal intergovernmental regulations and the scale of their cost-effects for state and local governments.[1] In the following pages we will briefly describe our study, the "methodology" we adopted, and our findings. We then offer some caveats based on our own experience regarding the counting of intergovernmental regulatory costs and offer some suggestions on how a general accounting of such costs along the lines set out in S.483, the Intergovernmental Regulatory Relief Act, might be accomplished.

We believe that the legislative and regulatory environment the states face in 1985 is substantially changed from that which prevailed in the mid and even the late 1970's. The current administration's regulatory relief and new federalism initiatives appear to have resulted in a meaningful reduction in the scope and costs of federal intergovernmental regulation. States and localities, for example, obtained a surprisingly high percentage (20-30%) of the total one time savings claimed by President Reagan's Task Force on Regulatory Relief.[2] Further, some of the most significant actions taken by the administration to reduce state and local governments' regulatory burdens have been supported by the courts.[3] Two important cases in point have been

the administration's broad revision of the Davis Bacon Act regulations and its rescission of federal "full accessibility" regulations for local public transportation agencies.[4]

That does not mean, though, that we believe that legislation embracing the objectives of S.483 is not valid. Clearly the direction of federal intergovernmental regulations, at least over the short run, will be towards fewer and less burdensome rules. However, the current ability of state and local governments to meet the kind of mandates we will be discussing--as measured by the proportion of federal funds they receive--has diminished sharply over the past five years. Recent reductions in federal intergovernmental regulatory burdens have simply not kept pace with reductions in federal support.[5]

Scope and Methodology of The Urban Institute's Study

Our 1979 study examined compliance costs for a limited sample of communities and a select number of federal mandates and conditions of assistance.[6] Of the hundreds of existing federal regulations that affect local expenditures we focused our attention on only six regulatory programs--each of which had been singled out by state and local officials as being particularly expensive and intrusive.[7]

The regulations selected for study were: advanced wastewater treatment requirements under the Clean Water Act Amendments of 1972 and 1977, unemployment compensation requirements for state and local employees under the 1976 Amendments to the Unemployment Insurance Compensation Act, bilingual education requirements (under various civil rights and bilingual education laws), P.L. 94-142, the Education of All Handicapped Children Act, transit accessibility requirements dictated by Section 504 of the 1973 Rehabilitation

Act and minimum mandatory wage requirements under the Davis Bacon Act. Our sample of seven jurisdictions was selected to include communities from all parts of the country with widely varying per capita income levels and local tax burdens. Regulatory impacts were examined in six municipalities: Burlington, VT, Alexandria, VA, Cincinnati, OH, Dallas, TX, Seattle, WA, and Newark, NJ. One urban county--Fairfax, VA--was also examined. The average population size of the jurisdictions selected was 394,000. Indeed, only one of the sites examined--Burlington, VT--had a population of less than 100,000 residents. Partly because of the size of these jurisdictions, their average level of federal assistance was higher than that of smaller cities--where a preponderance of Americans live.

Our approach to the research was relatively straightforward. Data were gathered from interviews with local officials and from local agency records. We supplemented government officials' subjective evaluation of "preferred costs" with trend data on expenditures in order to compare expenses before and after the imposition of federal regulations. As we were more concerned with reliability than completeness in cost estimates, we limited our calculations to the incremental costs of local compliance. Our results typically did not factor in administrative or overhead costs, or allow for the costs associated with secondary economic effects--all of which would have been extremely difficult to quantify. Thus, in a sense, our results understate the total regulatory costs associated with these six regulatory programs. However, as we also did not quantify benefits, those results might also be seen as overstating costs.

To determine incremental costs, we identified all direct local expenditures under the six regulatory regimes which would not have been

incurred in the absence of federal requirements. In other words, where existing local programs overlapped with federal requirements, we counted as "costs " only the proportion of total outlays that exceeded the level considered necessary by local officials. Thus, if local engineers believed secondary treatment of wastewater to be sufficient to meet health and safety objectives, but tertiary or advanced secondary treatment was required by federal standards, only the differential between the two would be identified as an incremental cost.

Findings

In brief, we found that the regulations we examined imposed substantial costs on the seven jurisdictions. The six "mandates" alone imposed an average cost of $25 per capita--an amount roughly comparable to the average federal revenue sharing receipts of each site in 1978.

We also found substantial variation across jurisdictions, with estimated costs ranging from $51.50 per capita in Newark, NJ to a low of $6.00 per capita in Burlington, VT. Four factors drove this variation in impact. First, and perhaps most important, is the level of prior activity conducted in each site in the specific area addressed by federal regulation. Cincinnati, for example, had a fully developed program for educating the handicapped in place at the time of enactment of the Education of All Handicapped Children Act. As a result, no incremental costs were incurred . Dallas, by contrast, had only a skeletal program in place, so costs soared after promulgation of federal standards.

Other factors contributing to variation include local demographic characteristics. Port and border cities such as Newark and Dallas have large non-English speaking populations which require expensive bilingual programs.

By contrast, cities lying further inland tend to have more homogeneous populations and do not incur comparable costs.

Fiscal condition can also affect regulatory costs. We found, for example, that the burden of paying unemployment compensation tended to fall most heavily on cities like Newark in the weakest fiscal conditions. Such cities are often hardest hit by economic downturns which compel widespread municipal layoffs. Ironically, then the cities and counties that are poorer and are suffering greater economic dislocation will have to bear heavier costs than more affluent jurisdictions.

These, of course, represent only a partial set of explanations for varying cost impacts. Others, which would also influence outcomes include: differing climates and environmental conditions, differing levels of political resistance to federal rules, and differing levels of technical capability in understanding regulatory requirements and devising cost-effective compliance alternatives.

Cost Accounting Issues Relevant to S. 483

In five important respects, the effort which we undertook for the Joint Economic Committee was substantially less difficult than the analysis and reporting requirement set out in Section 102 of S.483. In the first place, we examined only intergovernmental regulations which had been or were being implemented, making accurate assessments of incremental costs far easier than would be the case when speculating on prospective costs of proposed legislation or regulations. Second, we focused on a small set of discrete regulatory requirements. In many cases outlays were substantial. Further, total costs were typically absorbed--and could be identified--by a single governmental agency. (An example would be the impact of the application of

Section 504 of the Rehabilitation Act Amendments of 1973 to the specific area of public transportation.) The inquiry would have been much more difficult if we had examined more cross-cutting requirements--which apply to all or many federal assistance programs--whose impacts are far more diffuse and thus difficult to quantify. (If, for example, we had tried to quantify the impact of Section 504's mandate on hiring the handicapped across all agencies within a municipal or county government.) Along the same lines, even when measuring the rules we did, we limited our inquiry to direct compliance costs--we did not try to measure administrative or overhead expenses associated with compliance--much less the "non-economic costs" which would have to be addressed under S. 483. Finally, we made no attempt to identify or quantify benefits--one of S.483's most important but demanding requirements.

In one important respect, though, our analysis went beyond the requirements of S 483. Our approach to incremental costs uses as a base line all expenditures made by a state or local government in an area later made subject to federal regulations. The proposed legislation would recognize only those outlays which are made in response to state or local legal requirements.

Hidden Costs

Beyond these concerns though, our report to the Joint Economic Committee pointed up a number of problems which all efforts to calculate the costs associated with federal intergovernmental regulations, would have to address.

First, costs of regulations mandating the provision of new services or goods (such as transportation for the handicapped) are frequently underestimated because the existence of that service or facility often induces new and unanticipated demand. To illustrate, in 1982, after Philadelphia's transit agency created a door-to-door paratransit service for the disabled in

response to federal regulations, demand surged beyond all expected levels.[6]

Second, cost projections for regulations which compel major capital expenditures (such as the wastwater treatment requirements of the Clean Water Act or handicapped transportation requirements), often underestimate associated operating and maintenance costs.

Third, federal directives which stimulate a high level of demand for a product or service can produce significant price effects, often increasing total compliance costs, at least in the short run. This effect has been observed with regard to a broad spectrum of goods and services, including sewage treatment equipment and health services.

Recommendations

First, we should point out that we believe that the cost accounting requirement set out in S.483 is feasible--although its achievement would clearly involve a major effort.

Our own experience trying to count federally imposed regulatory costs suggests that the approach taken will have to be "micro" in character--with costs developed on a case-by-case, or disaggregated basis. We do not think that a macro-economic analytic tool exists which would provide accurate, useful estimates of total intergovernmental regulatory costs.

Further, in order to understand the impact of federal mandates, assessments are needed of two types of regulatory costs--total and incremental cost (i.e., the sum of all compliance costs for state and local governments, and the share of that total attributable to federal activity). The current bill's focus on the costs of activity "in excess of the amount that such a State or local government would be required to expend (sic) in the absence of such (federal) law...." would in many instances fail to reflect actions taken by

state and local governments in the absence of non-federal coercion. In areas ranging from handicapped education to wastewater treatment standards, we found that much state and local activity later made subject to federal regulation had been "voluntarily" initiated by state or local governments. Expenditures related to these voluntary activities would not be captured by the analysis required under the current version of the bill.

As it would plainly be impossible to count each jurisdiction's regulatory outlays, a sampling approach will be required. Such a sample will need to be stratified, among other things, by jurisdiction size, location, fiscal capacity, and, where relevant environmental and climatic conditions. This task should probably be undertaken by the federal agency charged with administering the overall effort.

Given the scope of the data gathering exercise which will be required, self reporting by state and local governments will be necessary. Self-reporting will need to be supplemented by extensive federal auditing to ensure that costs are being counted in a uniform fashion and that estimates are being accurately done.

Finally, given the clear thrust of S.483, it would be ironic, indeed, if such a newly imposed reporting requirement were not supplemented with a mechanism to reimburse the additional administrative expenses incurred by jurisdictions asked to participate in the effort.

FOOTNOTES

1. Thomas Muller and Michael Fix, "The Impact of Selected Federal Actions on Municipal Outlays," Government Regulation: Achieving Social and Economic Balance, Volume 5 of Special Study on Economic Change, U.S. Congress, Joint Economic Committee, Washington, D.C., 1980.

2. Presidential Task Force on Regulatory Relief, Reagan Administration Regulatory Achievements, August 21, 1983.

3. Building and Construction Trades AFL-CIO v. Donovan, U.S.D.C. D.C. 82-1631 (July 22, 1982), upholding bulk of Administration proposed changes to the Davis Bacon Act and American Public Transit Association (APTA) v. Lewis, 655 F. 2d 1272 (D.C. Cir. 1981) remanding DOT's full accessibility regulations to the agency for reconsideration.

4. Given the limited sample of regulations the study examined, our typology is far less developed than that which has been proposed by the Advisory Commission on Intergovernmental Relations in their report, Regulatory Federalism: Policy, Process, Impact and Reform, Washington, D.C., 1984. Our small sample did, though, arguably include regulations which could be considered direct orders (wastewater treatment standards under the Clean Water Act), cross-cutting requirements (wage standards under the Davis Bacon Act), crossover sanctions (unemployment compensation requirements for state and local employees) and partial preemptions (handicapped education requirements).

5. Beyond the cost issue, we have a further concern which tends to underscore the need for legislation resembling S.483. Despite the fact that state and local governments have received some regulatory relief over the past four years, the bulk of that relief has been administrative rather than legislative in character. We have no assurance that a more activist successor administration would not replace old rules or create a host of new ones.

6. Of course, state and local governments are not only regulated by federal rules, they also act as agents for the federal government administering federal regulatory programs such as OSHA and the Clean Water Act. With regard to the latter, federally imposed costs to the states and local governments appear to have risen over the past four years as responsibility has increased while federal assistance has ,on the whole, been reduced. See, generally, G. Eads and M. Fix, Relief or Reform: Reagan's Regulatory Dilemma, The Urban Institute Press, 1984, Chapter 10.

7. See, generally, M. Fix, C. Everett, R. Kirby, "Providing Public Transportation to the Disabled: Local Responses to Evolving Federal Policies," the Urban Institute Report to the Pew Memorial Trust, March, 1985.

Senator DURENBERGER. Next we will hear from a panel of officials representing States that are fine neighbors of the area of mandated reimbursement. Mr. Wallace Chan, deputy controller of the State of California, will be presenting testimony for Ken Cory, who couldn't be here; John Finnegan, auditor of the Commonwealth of Massachusetts; and Ken Payne, director of the Rhode Island League of Cities and Towns.

Gentlemen, if all of you would come forward. Your full statements will be made part of the record. I hope you can keep those statements to less than 10 minutes as we are running out of time.

We will start with Mr. Chan.

**TESTIMONY OF WALLACE CHAN, DEPUTY CONTROLLER, STATE OF CALIFORNIA, ON BEHALF OF KEN CORY, CONTROLLER, STATE OF CALIFORNIA; JOHN FINNEGAN, AUDITOR, COMMONWEALTH OF MASSACHUSETTS; AND KENNETH F. PAYNE, DIRECTOR, RHODE ISLAND LEAGUE OF CITIES AND TOWNS, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES.**

Mr. CHAN. Thank you, Mr. Chairman.

Mr. Ken Cory, the State controller, had planned to testify today on this important legislation and sends his regrets that he was unable to appear personally.

As you know, California has had a law on its books similar to S. 483 since 1972. The State controller of California is very much involved with this law as he is responsible for making the payments and the auditing requirement of the program.

In addition, he is one of five members of a Commission on State Mandates which hears allegations by local governments when they feel they have not been fully reimbursed under the program. The commission also makes recommendations to the legislature when it finds additional funding is needed.

The California program has gone through a transition since its inception in 1972. For instance, in the early years, a loophole in the statute allowed bill authors to disclaim State mandated costs by simply declaring in the bill that for various reasons there are no costs that need to be reimbursed. The disclaimer provision allows bill authors to bypass the difficult appropriations process which requires a two-thirds vote of the legislature.

In 1975, two major reforms were made to the California program. One, local governments were allowed to file appeals with the Commission on State Mandates if they felt their claims for reimbursement were improperly reduced. Two, the legislative counsel, the legal advisor of the State legislature, was authorized to determine if a bill would require reimbursement under the State mandated program regardless of the author's disclaimer statement. If reimbursement is deemed required by the legislative counsel, the department of finance, similar to your OMB, is then required to prepare an estimate of the State's cost.

Although these reforms were an improvement over the original law from the perspective of local government, the statute was still very restrictive in that local governments could not appeal for reimbursement if the legislature did not provide for necessary funds.

From 1973 to 1977, the State mandated program was very small. It paid a total of $48 million to local governments and the administrative responsibilities for the three or four State mandated programs were handled by their operating agencies. In the late 1970's, the program was broadened to allow local governments to appeal for reimbursement even if the State legislature had not appropriated funds. If the Commission on State Mandates decided in favor of the local government's claim, the State legislature was then requested to appropriate the necessary money.

These changes in the statute, accompanied by the voters approval of proposition 13, which increased the financial strain on local governments, resulted in a ballooning of the State mandated program. Since 1978, the State has paid $1.72 billion to local governments in contrast to $48 million paid from 1973 to 1977.

There are still problems with the State mandated program. The locals are still suing the State for more reimbursement. Some of the State legislatures are still invoking the disclaimer rule on reimbursement.

Despite the problems and the substantial outlay of funds by the State to implement the program, the controller believes that the State benefits from the program in the following ways:

Intergovernmental relations are enhanced, thus facilitating implementation of State programs at the local level. Without this reimbursement, many programs approved by the State legislature most likely would not have been implemented by the local governments.

The State mandated program is forcing the State government to consider the cost impact of proposals before they are passed. It is making us establish priorities and live within these priorities. Over the past few years, a number of programs that would have been approved in the past were defeated because their costs or administrative burden was too great.

California is generally satisfied with the State mandated program. Even when the State was basically broke in 1983, we still maintained our State mandated reimbursements because we believe the benefits outweigh the costs. The State controller believes the Federal Government will also find that the benefits of a similar program would be worth the cost.

At this point I would like to comment briefly on provisions of S. 483. This proposal is similar to California's program in a number of respects. An added feature which the controller particularly supports is the provision which prohibits Federal agencies or courts from enforcing the Federal regulations if funding to reimburse the State and local government is not available.

The controller would also like to make several recommendations for consideration of the subcommittee. First, we believe the bill should include the definition of a mandated cost and should further clarify the definition of an additional cost.

Over the past 10 years, California has had literally thousands of disputes over whether there is actually a State mandate and what the reimbursement amount should be. We have found there is a significant variation among our local governments in calculating net additional costs, even when they are given specific claiming instructions.

Our next recommendation is that a specific payment mechanism should be established for processing mandated cost claims. In California, the State controller's office is directly responsible for receiving, auditing, and processing these cost reimbursement claims. We believe that this provides for a more efficient method of handling the claims rather than allowing them to be processed through the various State agencies. We believe that a centralized system such as ours would be more efficient.

Third, we would like to recommend that the act include some audit capabilities to ensure claims are submitted properly. The State controller's office has found that after-the-fact field audits have resulted in savings of millions in adjustments resulting from either intentional overstatements or misinterpretations of the law.

Finally, and most importantly, we recommend that you establish an independent agency similar to our Commission on State Mandates to handle disputes over claims, which we know will run into the thousands.

Mr. Chairman, on behalf of the State controller, I want to thank you for your leadership and initiative in fostering better intergovernmental cooperation. I will be happy to answer any questions at the appropriate time.

Senator DURENBERGER. Very good.

Mr. Finnegan.

Mr. FINNEGAN. Thank you, Senator. I have submitted a written statement. I will try to enlarge upon that as succinctly as possible.

Senator DURENBERGER. Thank you.

Mr. FINNEGAN. The State of Massachusetts for many years had the tag "taxachusetts." It did so primarily because of the very impressive property tax rates that the city and towns individually through their homeowners had to pay.

In an effort to address that problem in a positive fashion, the voters adopted in November 1980 a law called proposition 2½. Basically what it did was to ceiling the amount of revenue the cities and towns could raise through their two major revenue raising mechanisms: The property tax on the one hand and the automobile excise tax on the other.

In order to put fairness into the law and to recognize the constraints under which the cities and towns would henceforth be dealing, they built in a mechanism which they called a safety valve, the division of local mandates, and they placed that division in the office of the State audit which is an indepedently elected constitutional office in Massachusetts.

The division works on a very simple and very, very clear legislative mandate. The mechanism is that if any rule or regulation or any law is passed in a given year that is in fact a mandate—not a local option—but a mandate for cities and towns, if the costs are deemed by the division of local mandates to be greater than incidental, which is virtually any cost involved, then the State has to pay the cost. Now, that is very simple and very clearcut.

It has been tested. It has only been in operation since January 1, 1981. The rule or regulation or the law has to go into effect subsequent to January 1, 1981.

The matter has been tested in the State's supreme court and the State supreme court said, in a landmark case, in a unanimous deci-

sion, that if the legislature doesn't pass in the same session as the law or the rule or regulation is passed, the appropriation necessary to carry out the law or the regulation, as the case may be, then in effect the cities and towns don't have to obey the law and in fact the law is a nullity.

Think about that. If the Senate and Congress pass a bill and the President signs it into law, the States, in the case of the Federal Government, and the cities and towns, in the case of Massachusetts, have no obligation to obey unless and until the money is appropriated. The court further said that the money must be appropriated up front or at least contemporaneously with passage of the law or the promulgation of the law or regulation. It is very clear and very, very strong.

It falls to the division of local mandates to make the determination, one, if it is a mandate, two, if it takes effect subsequent to January 1, 1981, which on its face may seem to be pretty clear cut, but in the case of many rules and regulations and interpretations it is not, and also whether the costs are greater than incidental.

The estimates that we make in terms of the costs carry with them the weight of prima facie evidence by law in any subsequent court decision. The only appeal mechanism that is available in these circumstances is the right of an aggrieved municipality to bring a suit within 30 days under our General Administrative Procedure Act. That is a pretty general statute in Massachusetts covering any particular statute that doesn't have specific appeal mechanisms built into it. That is the only appeal mechanism that exists.

In the 4 years we have been involved with the division of local mandates, we have rendered several opinions. None of them to date have been appealed, although there is one pending that there is some talk about appeal. None of them have been appealed to date.

The total cost of the mandates is just slightly in excess of $7 million. The savings to the State, on the other hand, approximates $1 billion. Just last year there were two major pieces of legislation filed, one for educational reform and one for binding arbitration, which is a closure mechanism for police and firefighters in the Commonwealth to settle their disputes because they are not allowed to strike by law in the Commonwealth of Massachusetts.

In both of those cases the division of local mandates was asked by legislative body to give them an opinion as to cost. We did in both cases. The cost was so high that both matters were shelved. In fact, the binding arbitration matter, which had been approved—they had taken a vote in committee and it had been approved—and that vote was subsequently rescinded and the matter has been dropped.

So I think that the savings in the State has far outweighed any costs that are involved.

In commenting on S. 483, I would echo the comments of Mr. Shannon who talked about the matter of retroactivity. I think it would be extremely difficult and maybe so difficult that it might defeat the bill ab initio were it to be a problem.

I also echo the comments of my brother from California who says you do need a very clear definition of what a mandate is. I don't

think you need a long, expensive study. I think you need some very succinct and straightforward language that will suffice to do that.

Also as was recommended, I think the key to it is an independent agency, commission, individual, office. I am not as conversant with the Federal Government. But in our case we are elected independently. We do not run as part of a ticket. We do not answer to a Governor or State office, although there are only six of us in the State. So it makes it much easier for us to function. If we were to act by mandate of a legislature or were we to be authorized or appointed by the legislature, it would make it very difficult to make some of the rulings we make. We really sit in a quasi-judicial fashion when we make our rulings, and they are very clear. So I think you should add those pieces to the puzzle, if you will.

I just will say one other thing. We have been in operation since 1981, 2 months after the effective date of proposition 2½. We have a total of 14 employees. We have just gone from 10. Our budget is less than $360,000 a year. So it is not a big bureaucracy by any stretch of the imagination. We have individuals who are out in the Commonwealth on a daily basis. We divide the State into six regions. These individuals do outreach work and whatnot with the municipalities which helps by and large to cut down on a lot of situations that otherwise might come in that really don't belong there. I think we can say, without trying to be self-serving, this is working very well.

Senator DURENBERGER. Thank you very much. Mr. Payne.

Mr. PAYNE. Thank you, Senator Durenberger. The National League of Cities deeply appreciates the opportunity to testify before you today on S. 483. My name is Kenneth Payne. I am executive director of the Rhode Island League of Cities and Towns. I would like to have my full testimony entered as part of the record.

Senator DURENBERGER. It will be made part of the record.

Mr. PAYNE. Thank you.

Rhode Island has a statute similar to S. 483. I am certain that in the mind of Rhode Island local officials no State law affecting local government passed during the last decade is more important than the mandated cost reimbursement statute. Local officials refer to it constantly. This is not because the statute has become a significant source of additional State revenues to cities and towns. It has not.

The mandated cost reimbursement statute has changed the way State government thinks in Rhode Island. State legislators and State agency personnel now understand if, "we play, we pay." This is a good rule.

In the past, interest groups would go to the Rhode Island General Assembly and argue, "Such and such is needed. You can get deserved credit for having acted favorably on it, and it will not cost you anything. Cities and towns have to pick up the tab." Now negotiations are held to determine how the purposes of worthy proposals can be achieved without State mandates.

Each year there are hundreds of cases in Rhode Island where the mandated cost reimbursement stops State intrusions into local government before it happens.

If Rhode Island local officials were given the choice either of some increased State aid or the retention of the mandated cost re-

imbursement statute, they would gladly choose to keep the mandated cost reimbursement statute.

What you are considering is genuinely watershed legislation.

I would now like to briefly describe how Rhode Island's statute works. First, there is a definition of mandated cost. That is, any State initiated statutory or executive action that requires a local government to establish, expand, or modify its activities in such a way as to necessitate additional expenditures from local revenues.

When statutory or executive actions are intended to achieve compliance with Federal statutes or court decisions, the State mandate is anything that exceeds what is required by the Federal Government or the courts.

The Rhode Island statute goes on to divide State mandated costs into two categories: those subject to reimbursement and those not subject to reimbursement. The second category, mandates not subject to reimbursement, recognizes that the State has certain constitutional responsibilities and that there should not be statutory barriers to the States taking actions to meet these responsibilities. A few, for example, are holding elections, the assurance of due process, and the notification and conduct of public meetings.

With regard to mandates subject to reimbursement, and these are most all mandates, the Rhode Island Department of Community Affairs annually holds a hearing to determine whether there are any new State mandates. In other words, it just announces a hearing. It doesn't have any proposed list. Cities and towns then come forward with what they believe are the new State mandates. After reviewing what is presented at the hearing, the department then issues a proposed list of mandates. There is a period of comment and then the department adopts that list.

This process relies on the fundamental assumption that local officials can identify what is a mandate far more readily than State officials and that there is enough variation among communities so that it is difficult for a State official to identify whether or not something may or may not be a mandate at the local level.

Cities and towns then determine the cost of complying with each mandate and submit a financial report to the State government. The State then includes that as a line item, does its addition, and the total included in the State budget. Then reimbursements are made to cities and towns in July of each year.

The most important thing about Rhode Island's experience with its mandated cost reimbursement statute is that it has slowed to a virtual stop the imposition of new State mandates subject to reimbursement. It is good preventive medicine.

This outcome was expected. Indeed, the mandated cost reimbursement law was designed with the assumption that little money would pass through it.

That the mandated cost reimbursement statute is preventive medicine is liberating. It has enabled the State to have a participatory process. Local governments have an opportunity to voice their concerns about what they think new mandates are and State officials have the opportunity to hear about what is going on at the local level. No new bureaucracy has been created in Rhode Island to administer the State mandated cost reimbursement program.

For Rhode Island, S. 483 is one of the most important pieces of Federal legislation being considered this year. Mayors, city managers, and council members were pleased at an executive board meeting of the Rhode Island League of Cities and Towns to hear that I was going to come and testify before you on behalf of the National League of Cities and were glad to pay my expenses to come.

Controlling Federal mandating will be a great step forward. It will improve intergovernmental relations.

Because the responsibilities of the Federal Government are so complex and because the system of State, county, local and special district government varies so across the Nation, the review of intergovernment regulations required by title I is an important and necessary first step.

In Rhode Island, the State mandated cost reimbursement statute has not resulted in abandoning efforts to promote justice or improve the general welfare. These have continued, but with greater recognition that the level of government that makes a decision should pay for implementing the decision.

The Rhode Island law has resulted in the passage of more enabling legislation conferring powers on local governments rather than requiring them to do things. It has fostered debate and negotiations at the local level about how to deal with important issues. And it has inspired further search for creative solutions to government problems. Section 103 of S. 483, alternative means of regulation, should be taken seriously. It is potentially a key provision, not a sop.

Meeting the obligations of cities to the low-income residents of our communities, the human mandates issue, is a basis for partnerships in intergovernmental action. Each partner—Federal, State and local government—has a role to play, especially when human needs result in circumstances beyond the control of State or local government. The withdrawal of the Federal Government from the partnership is effectively a mandate on State and local government because the need itself and the necessity of action have not gone away. Having a State mandated reimbursement law in Rhode Island has not resulted in the State's foreswearing its responsibilities.

An effort by the Federal Government to clarify what precisely are Federal mandates and how much they should cost will be beneficial at the local level. There is a tendency on the part of State officials to say the Devil made me do it, and that Devil is often later identified as the Federal Government. Thus, the Federal Government is blamed for State initiatives and programs that are unpopular and onerous at the local level.

In closing, I must emphasize the importance of reimbursement for federally mandated costs, the efforts to control mandated costs may decline unless title II is ultimately enacted. It is an extraordinarily important concept to have reimbursement for mandated costs.

Once again, I appreciate the opportunity to appear before you. I also appreciate congressional efforts to recognize the National Government must meet its responsibilities for the cost of legal and human mandates.

Thank you very much.

Senator DURENBERGER. Thank you very much.

I wonder if each of the three of you might give me some examples of the areas in which you believe your own States and local governments should be reimbursed.

While you are thinking of that, let me state the problem as I perceive it.

When John Shannon replied to my question about the intergovernmental system, he said—as the President has said often and many people have said often—that we ought to reimburse the States and local governments for the costs of doing what they would not do on their own.

Therein lies a problem. If I asked you, each of you, what percentage of your local tax expenditures in a community are for local purposes, regional purposes, State purposes, national purposes, I don't think you could give me any answers for any communities in your States. I think the reason is that we have lost sight of what truly is local. We can all say that the volunteer fire department is. And maybe the local police department would fall in that category, and in the old days education would.

But when we start moving beyond that and getting ourselves up into the 1980's, we talk about preserving space for future generations, stopping drug traffic and clean air and water, leaking underground storage tanks and what are we going to do about them, soil erosion, civil rights, equal rights, it gets a little hard to say we would not have done that but for a Federal mandate. It is an historic fact that we did not do it before some particular period of time or we did it differently before some period of time.

I am curious to know how each of you might respond to the issue of whether or not it is a Federal act that mandated something being done in a certain way that ought to be reimbursed or it is a Federal act that says you have to do this that ought to be reimbursed or is it something else? We head off into a murky area here when we try to define, as Mr. Chan told us, and they had problems in California defining, what is mandated cost.

So maybe each of you can help me to focus on what are clearly, without a doubt, the kinds of things we do that burden State and local government with State and local resource costs that under other circumstances they would not have gotten into.

That may not be the right place for me to draw the line. I think I ought to draw it further over to say you might have done this and you didn't have the resources to do it and so you came to us and we mandated the resources, but we only mandated so many dollars. Is that the right place to draw the line. If you could give me examples ti would help give me some idea of where we should apply this legislation in terms of Federal mandates.

Mr. CHAN. Mr. Chairman, in California, if you have any mandates or any new laws dealing with new crimes, they are not reimbursable. You need a Commission to determine whether mandates are to be reimbursed or not.

That is one of our problems in California right now. We have thousands and thousands of disputes and requests of local governments saying, "You are telling us to do something; pay us to do it." We are saying well, we didn't tell you to do this for our sake; we are saying that this is for your own good. [Laughter.] They say

never mind what is good for us, if you are telling us to do something then you will have to pay.

So it is important that you do have a commission to make these kinds of decisions.

Senator DURENBERGER. Mr. Finnegan.

Mr. FINNEGAN. Mr. Chairman, I think that you have outlined it very well, whether it is the issues you talked about of fighting the drug traffic or environmental concerns or whatever they are. Then we can get into a philosophical discussion as to what is gray and what is white and what is black and whether you do it or not anyhow if the Federal Government sat back and waited long enough or whether it is the job or role of the Federal Government to prompt and prod, as they did for many years with declining grants and so forth.

I think in order to have a successful mandate apparatus you have to make it black and white. You can't get into gray. If the Federal Government mandates a program, regardless of what the thinking is or reasoning is or philosophy behind it is, if the Federal Government mandates a program beyond a certain date, then the Federal Government must pay for that program, period.

I don't say that to make it simplistic, but unless you do, you get into the gray area of well, would you have done it anyhow. I heard some testimony here today, and I think it is referred to in S. 483, what is considered significant. It raises the question in my mind according to whom, by what standard how do you arrive at those. I think you have to make it very clearcut.

I think what happens as you work it backward is a lot of legislators begin to become aware if they file legislation, it is going to become a mandate or it is very likely to become a mandate. If it does, there is a tremendous cost attached to it, which in our State, we are into the third and fourth year, where more and more we get informal requests from legislators, "I filed a bill on such and such. Would you tell me if it will be mandated informally; and, if so, how much will it cost?"

I think what happens is you get more winners, you get fewer laws filed or potential laws filed in the first place, or you begin to focus on where the real problem is, at least in our Commonwealth, and that is in the rules and regulations. The laws are relatively easy to deal with. It is the rules and regulations that really drive the municipal officials up the wall and cause us the greatest amount of difficulty.

So I think, to answer the question directly, there has to be a black and white point, whether it is a time point, as we have, a very clearcut and very simple definition which says anything after this date that is mandated that has a cost to it and it is not incidental, that it has to be paid for, and it has to be paid for 100 cents on the dollar.

Senator DURENBERGER. Mr. Payne.

Mr. PAYNE. Thank you. I will try to answer your question with a very specific example. Let us use the example of Public Law 94-142 which requires the provision of special education services.

I will begin by saying that government is generally unpopular. If you were to ask people what they think of government, people would go "Yuck, it is something terrible." This is in part the result

of government's response to itself: Where one level of government blames the higher level of government for what is going on. Local officials will often say the State made me do it. Then the State official will turn around and say the Federal Government made me do it.

Now if we use the example of Public Law 94-142, what you have in Rhode Island is a set of State officials saying the Federal Government is making them do certain things with regard to special education. What the State officials really want to do is something of their own as well, but they blame the Federal Government for it.

If you at the Federal level were to say here is what we intended to do and we are willing to pay for what we intended, then the State would have to buy what it intended to do, its additional things, and pay for them.

If there were still further interest in services, if there were lobbying by special interests groups at the local level, which there invariably is, then if the State is picking up its costs, if there is more to be done at the local level, then local officials bear the responsibility for decisions about those additional services.

The result would be far less blame of the Federal Government for State and local discretionary actions.

I could use just as easily instances from RCRA where you have environmental laws that start at the Federal level and they are added to at the State level and added to again with local implementation. The same thing happens again.

So it would be beneficial to you. I think you would enjoy a better reputation. And you would have much better control over how Federal law is implemented at the State and local level.

Senator DURENBERGER. Very good.

Gentlemen, we have arrived at the noon hour. I appreciate very much your testimony. I am going to ask Margaret Wrightson, staff director of the subcommittee, to send you some questions, particularly with regard to fiscal notes. We had that process started here a few years ago, but nothing is happening. So I need to know what we ought to do about that part of the process. There are also a couple other questions that if we tried to tackle right now, we would be here for a long time.

If you don't mind, we do have some additional questions to elaborate on your testimony. If you will take the time to answer them for this hearing record, it would be most helpful to us.

I thank you for your statements. I thank you for taking the time to come to Washington for something I hope we can do something about.

[The prepared statement of Mr. Cory and responses to written questions; the prepared statement of Mr. Finnegan and responses to written questions; and the prepared statement of Mr. Payne follow:]

KENNETH CORY
Controller of the State of California
SACRAMENTO, CALIFORNIA 95805

Statement of

KENNETH CORY

State Controller

State of California

on

S. 483 THE INTERGOVERNMENTAL REGULATORY RELIEF ACT

before the

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

May 14, 1985

Mr. Chairman, members of the Subcommittee on Intergovernmental relations, hank you for the opportunity to share with you my views on S.483, the Intergovernmental Regulatory Relief Act of 1985.

My name is Ken Cory, and I am the elected State Controller of California. As you may know, we in California have had a law similar to S.483 in force since 1972. As the Controller, I am responsible for reviewing and auditing the mandated cost claims filed by the local governments before authorizing the State Treasury to make the payments. I am also one of the five members of our State Commission on State Mandates. The Commission's primary function is to hear claims by the local governments that they have not been adequately compensated for state mandated programs and make recommendations of its findings to the Legislature. Throughout this testimony, you will hear the term "Board of Control" a lot. The Board was replaced by the Commission on State Mandates in 1984, and I am using it interchangeably.

From my perspective, the timing of this hearing is particularly appropriate as we in California are trying to find ways to solve a little problem which we believe is caused by the Federal government. In 1978, Congress passed a law directing the states to enact laws to require unemployment insurance coverage for the employees of <u>all public entities</u>. The law also specifies that, if the state doesn't do this, its private employers would not be allowed to deduct their UI taxes from their taxable income which would amount to billions of dollars for California. Needless to say, your "shotgun to the head" approach worked as the State quickly passed a law to comply with the Federal directive. Anyway, the public entities want their

costs reimbursed under the state mandated cost law while we consider it a federal mandate which is not subject to reimbursement. They sued us, and the courts ruled in their favor. Now, we are struggling to find a way to come up with $240 million to fund the program costs.

Mr. Chairman, I know by now you must have heard hundreds of stories like this, and I don't want to further belabor the point. I do, however, want to emphasize that things like this are not conducive to good intergovernmental relations.

Now, let's talk about the state mandated cost program in California. It all started in 1972 when we passed the "Property Tax Relief Act of 1972," commonly known as SB 90 in California. The primary purpose of the Act was to impose property tax rate limits on cities, counties, and special districts, and revenue limits on school districts. As a tradeoff, the State agreed, in principle, to reimburse the local governments the cost of new state mandated programs and any revenue losses resulting from future property, sales or use-tax exemptions.

SB 90 didn't do the local governments much good because it contains too many loopholes. Most significantly, it allows the bill's author to disclaim state mandated costs by including a statement in the bill explaining why the mandated costs are not reimbursable and therefore not provide for any appropriation. Since our State Constitution requires a two-thirds vote for any appropriation bills, the disclaimer clause has frequently been used to circumvent the two-thirds rule.

In 1975, we tried to reform the SB 90 process by passing a bill to establish a set of appeal procedures. Essentially, the reform measure allows local governments to file appeals with the State Board of Control (now the Commission on State Mandates) on specific situations. In addition, it requires the Legislative Counsel's Office, an independent arm of the Legislature, to determine whether or not the bill would require reimbursement as a state mandated cost. When the Legislative Counsel determines that reimbursement is required, the Department of Finance, similar to your Office of Management and Budget, is required to prepare an estimate of the reimbursement amount for possible inclusion in the bill. Again, this measure was ineffective because it was too restrictive on the type of case the Board of Control can hear. For example, the Board was not authorized to hear cases where the Legislature did not appropriate money in the enacting legislation, regardless of whether additional costs have been incurred.

From 1973 through 1977, the state only paid a total of $48 million for the cost of state mandated programs. Reimbursements were limited to three or four programs where the Legislature recognized in the statute that a state mandate has been imposed and appropriated money to fund it. The administrative workloads were absorbed by the state departments having an operating responsibility for the programs.

In 1977 and again in 1978, the State passed further reform measures to revamp SB 90. Most significantly, the new statutes expanded the scope of the types of claims the Board of Control was authorized to hear. I have stated earlier that the local governments had no recourse on bills containing the so-called "disclaimer" statements. Now they may file a claim with the Board of Control if they believe they have not been adequately reimbursed for the costs of a State mandate in all instances. If the Board decides in the local's favor, they may approve the claim and ask the Legislature for additional funding.

At about the same time, it is widely known that the voters in California passed Proposition 13. The Constitutional Amendment restricted the local governments' ability to impose additional taxes and thereby caused them severe financial strains. Consequently, they are much more vocal. A number of lawsuits were filed to compel the state to pay for the cost of mandates. Some local governments openly refused to implement state laws they considered imposing mandates without providing funding to cover their costs. In turn, the lawmakers in Sacramento have become much more sensitive about the fact that, if they want their programs implemented, adequate funding must be provided to cover program costs.

Because of Proposition 13 and the reform measures in 1977 and 1978, the cost of state mandated cost programs exploded. Since 1978, we paid $1.72 billion under the mandated cost program in contrast to the $48 million from 1973 through 1977. Of this amount, $1.56 billion were paid through the "funded" mandated programs where the costs are funded through an appropriation in the enacting legislation. Another $157 million was paid through claims filed with and authorized by the Board of Control for programs which were not funded in the enacting legislation.

We now have over forty full time people plus an undeterminable number of partimers, located in several state departments, to handle the administrative workload in connection with this program. From four programs in 1977, we now have 59 programs funded under the mandated costs provisions. Examples of the programs include: busing to comply with the court-ordered desegregations, property tax postponement programs for senior citizens, filing requirements for guardianships and conservatorships, and procedures for voter registrations.

As you can see, our state mandated cost program has evolved from an relatively obscure program into one of major importance. We have continuously redefined and refined our process and procedures throughout the years the program has been in existence. Our system is by no means perfect. Local governments still are suing us, claiming that we don't reimburse them enough. At times, the disclaimer clause is still being used excessively to circumvent the two-thirds rule. However, I believe our State programs are now better received by the local governments and, overall, it is a system everybody feels they can live with.

You may wonder what we received in return for this very substantial outlay of state money. I believe we got plenty in return. The most obvious one, of course, is that it enhances intergovernmental relations which, in turn, facilitate the implementation of the State programs. Earlier, I stated we now have 59 funded programs in California. Given the financial difficulties of our counties, cities, and special districts after the passage of Proposition 13, I doubt if any of these programs would have been implemented without state funding. Our local governments have repeatedly told us and you, I am sure, that: "We don't have any problem with what you want to do. However, if you want us to do it, you have to pay for it. Otherwise, don't expect it to be done". I know they really meant it in California.

On a more personal note, Mr. Chairman, I know the Congress recently enacted the "Single Audit Act of 1985" under your authorship mandating single audit for state and local governmental entities. You must be well aware of the fact that the Federal government has tried to do so administratively since 1979. They have not been able to achieve any degree of success because of the method of funding is inadequate. Unless this problem is resolved, I believe you will continue to have problems in getting the single audit concept implemented.

I want to bring up another benefit of our mandated cost program which is less obvious but I feel is equally important. Because of it, our law now requires an independent cost implication analysis (by the Legislative Counsel) and a cost estimate (by the Department of Finance) when a bill is introduced and each time when it is amended. The cost estimate is presented to the

various committees where the bill is being heard. Therefore, it is forcing us to consider the cost impact of bills up front instead of after the fact. It is forcing us to live within our means by considering our priorities. I do not have the statistics. However, over the last three or four years, I know of numerous bills which failed passage because of their mandated cost implications. In addition, due to concerns over mandated costs, many cumbersome administrative procedures in bills were either deleted or simplified.

We had animal right groups approach the Legislature in 1980, requesting a law that would allow stray cats the same equal rights as stray dogs by requiring public pounds, animal shelters, and humane shelters to keep cats for at least 72 hours before disposing of them. The bill was readily adopted without discussion. Everybody believed stray cats should have the same rights as stray dogs. However, had they known the fact that the program would have cost the State about $5 million a year, the bill's final outcome may have been different. At least, there would have been much more discussions and debates on the merits of the bill versus its costs before it was passed.

Mr. Chairman, the above represents a brief overview of California's experience in implementing its mandated cost program. In general, the program has benefitted us by helping us implement programs that are of vital State interest, by simplifying cumbersome regulations and procedures, and by filtering out less meritorious programs. I believe the program can and will benefit you at the Federal level as well. I know you are having problems in

dealing with the mounting budget deficit, and some people will contend this is an added cost which you simply cannot afford at this time. I just want to point out the fact that, even during the period in 1982 and 1983 when the State was broke and had to resort to issuing registered warrants (which in fact are IOUs) to pay its bills, we still maintained our mandated cost program because we believe its benefits far outweigh its costs. I am sure you will find the same is true if S. 483 is adopted.

Now, I would like to take a few minutes to comment on the current version of S.483. In concept, the bill is similar to our mandated cost program which established the principal that the local governments shall be reimbursed for any additional costs of implementing Federal mandates. The bill also specifies that no Federal agency or courts may enforce Federal regulations which do not provide sufficient funding to reimburse the states and the local governments for the costs of implementing such regulations. In my opinion, this is a very desirable added feature over our State law.

I do, however, have several recommendations for you to consider.

First, I suggest a section be added to the bill defining what a "mandated cost" is. As I indicated before, I am on our Commission on State Mandates which has jurisdiction over cases brought forth by the local governments. During the last ten years, we heard literally thousands of cases over whether

State law or regulation actually resulted in a mandate and what the eimbursement amount shou'd be. We continuously have cases for which there is o precedent. It is at the point where now we have consulting firms in alifornia specializing in filing mandated cost claims for the local overnments.

For example, I mentioned earlier about the Federal government telling us that we will lose billions of dollars in tax deductions if we do not require UI insurance for all public employers. Was that a Federal mandate or was that a state option? What happens when a Federal mandate results in no additional cost, but revenue losses. Do you intend to fund the revenue losses as a mandated cost as well?

The problem is further compounded by the difficulties in determining what "additional cost" is. I know you have a definition in the bill for "additional cost." However, I believe you still have problems, particularly in cases when a mandate is an addition or an adjustment to an existing program. Our experiences have shown that there is a significant variance among our local governments in their calculation of "net addition cost" even when given the same set of claiming instructions for the same mandated cost program.

For your information, the overall definition for mandated cost in California is:

1. The full cost of any new program or increased level of service of an existing program mandated by legislation or executive order, and

2. Revenue losses stemming from new property or sales and use tax exemptions.

In addition, we have numerous additional criteria for determining what constitutes a mandate and for calculation of additional costs. If you want, I'll be glad to have my staff work with the Senate staff on this.

My next recommendation is to set up a centralized payment mechanism for processing mandated cost claims. In California, my office is the department having the responsibility of processing mandated cost claims. When we enact a law imposing mandate which contains an appropriation to fund the costs, my office, based on the criteria established by the law, prepares and issues claiming instructions to the local governments. The entities incurring the costs prepares the claims based on our instructions and submits them directly to us. We then desk audit the claims and direct them for payment to the State Treasury. On a random basis, we perform after-the-fact field audits of selected entities to ensure claims are properly prepared and make adjustments when deemed appropriate.

We believe our process of my office directly receive and process the claims is a far more efficient then going through the various state departments. When the Legislature recognizes the imposition of a mandate and provides funds to pay for its costs, the question seems to be how can we make the payments most directly and most efficiently. It makes very little sense to send claims through another state department to my office, thereby creating another level of bureaucracy. S.483, as it is now written, directs the payments be made by the individual Federal departments. I urge you to consider a centralized function, possibly by the Treasury Department, to handle the payments.

While we are on payment systems, I must emphasize the importance of an after-the-fact field audit function as we have in California. Our experience have shown that, in numerous instances, there is really no other means of verifying whether a claim is proper except through field audits. Additionally, our audits often result in adjustments totaling millions either because of intentional overstatements or misinterpretation of laws. Therefore, I suggest you build into the law some audit capabilities to ensure proper submission of claims.

Finally and most importantly, I recommend that you establish an independent agency similar to our Commission on State Mandates to handle disputes as a result of the states or the local governments claiming they have not been adequately compensated. Based on our experiences, I believe there will be numerous such disputes over the interpretation of laws (e.g. whether a mandate has been imposed) and whether the funding level (which is based on estimates) is sufficient. We have had thousands of cases involving these type of disputes.

For example, we passed a State law in 1978 directing the school districts to provide retirement credit to the teachers for unused sick leave. Even though we recognized a State mandate at the time, we did not appropriate any money because we thought the costs would be offset by savings resulting from the teachers using less sick leave and therefore cutting down school district overtime payments. Because of claims filed by the school districts with the Commission, we performed a follow-up study and found the law actually cost about $20 million per year. The State had to come up with the additional funds.

As I stated before, we heard many cases like this. We believe the concept of providing an independent and unbiased administrative review has really worked well for us. It has drastically cut down the number of lawsuits we faced. In addition, local governments are satisfied because they at least have a chance to have their views considered. I am sure you can benefit from it as well.

Mr. Chairman, this concludes my prepared testimony. Before answering any questions you may have, I would like to commend you for taking the initiative to introduce S. 483 which, if enacted, would promote greater intergovernmental cooperation and facilitate state and local implementation of Federal programs. Again, thank you for the opportunity to present my views.

RESPONSES OF MR. CORY TO WRITTEN QUESTIONS

Question #1:

At our last hearing on this subject it was made clear that the fiscal notes law we have on the books at the federal level since 1981 has not worked very well. Similarly, at the state level, the ACIR has documented numerous problems with many state fiscal note and mandate reimbursement laws. So, it's clear that a lot can go wrong. One question I would like all of you to answer is why you think your programs have been successful when so many others have not?

Answer:

We were able to succeed because of the various improvements we made to our system. We established the system of having independent cost-impact analyses (fiscal note process) by the Legislative Analyst and the Department of Finance which counteracted the excessive usage of the disclaimer clause by the legislators. We created the Commission on State Mandates to provide an impartial administrative hearing process to let the local governments air their grievances. We developed a process for conducting pre-payment and post-payment field audits of mandated cost claims to ensure that they are properly prepared. Most importantly, we are actually providing them with the necessary funding for the cost of implementing the programs we mandated, and our local governments know this too. We have the statistics to show that we have paid $1.7 billion over the last seven years to local governments under our program.

Question #2:

As the sponsor of the State and Local Cost Estimate Act of 1981, I was interested to read in some of your statements that your mandate reimbursement program greatly improved the quality of the California's fiscal note process. Could you elaborate on this connection and provide us some examples?

Answer:

Frankly, before our mandated reimbursement program, we did not have any fiscal note process. Our process was established in 1975 because of the objections raised by our local governments that the disclaimer clause was excessively used. Since the process was initiated, we have refined it and added more staff to do the estimates. In our Department of Finance alone, we have 15 full-time staff members performing this function. In addition, we have the independent Legislative Analyst's Office perform estimates which are matched against those of the Department of Finance. Over the years, the staff has developed expertise in specialized areas or geographical location which tends to increase the accuracy of the cost estimates.

However, I must caution you that, despite all this, we still have problems sometimes with the accuracy of the cost estimates. In my written testimony, I gave an example of our law mandating sick leave credit for retired teachers. The original cost estimate indicated that there would not be any additional cost because of offsetting savings. The program ended up costing the state over $20 million each year. That's why I feel it is so important to create a board of commission to independently arbitrate cases and rectify situations where cost estimates are erroneous.

Question #3:

One of the principal objections to a mandate reimbursement bill is an obvious one: It will cost the federal government some money. And, to many, it seems pretty clear that we just can't afford this kind of a program in 1985. How much has mandate reimbursement cost in your states, and do you think it's been worth it? If asked to sum up, what do you count as the principal benefits coming out of your mandate reimbursement programs? Do you have any examples?

Answer:

California was able to gain two very important benefits from our mandated cost program.

First, it helps in getting our state programs implemented. Local governments have told the state that they will not implement any state mandate which was not funded. Presently, the state has fifty-nine (59) programs funded as mandated cost programs. All of these are considered to be of vital state interest. Expenditures of the mandated cost program by fiscal year since its inception are as follows:

| | | | |
|---|---|---|---|
| 1974-75 | $16,743,000 | 1980-81 | $ 38,805,000 |
| 1975-76 | 9,680,000 | 1981-82 | 91,489,000 |
| 1976-77 | 18,356,000 | 1982-83 | 90,114,000 |
| 1977-78 | 45,297,000 | 1983-84 | 111,407,000 |
| 1978-79 | 48,749,000 | 1984-85 | 82,498,000 (est.) |
| 1979-80 | 88,798,000 | | |

Second, the existence of the mandated cost program has forced the state legislature to be more cost conscious. With limited revenue sources, they now prioritize their need much more carefully which has resulted in numerous proposals of less merit being dropped or cumbersome administrative requirements being simplified or deleted. In addition, we have seen a dramatic decrease in the number of state mandates being imposed on local governments since the state must now pay for such mandates. Mandates which cost in excess of $2,500,000 are more carefully weighed against their possible benefit before passage. The range of costs of state mandates are as follows:

| Ranges of Annual Cost | No. of Programs |
|---|---|
| $ 0 - $ 50,000 | 20 |
| 50,001 - 200,000 | 12 |
| 200,001 - 500,000 | 6 |
| 500,001 - 1,000,000 | 10 |
| 1,000,001 - 5,000,000 | 10 |
| 5,000,001 - 10,000,000 | 0 |
| 10,000,001 - 15,000,000 | 1 |
| 15,000,001 + | 0 |

Question #4:

Each of you has talked to some extent about the political and fiscal climates in your states which brought about your mandate reimbursement programs--proposition 13 in California and proposition 2 1/2 in Massachusetts--Tell me, do you see a relationship between cutting federal aid programs and the need for enacting a federal reimbursement program?

Answer:

I believe there are two answers to this question. In theory, there should not be any relationship. If Congress passes a law mandating a program which results in increased cost to us, we expect reimbursement for such cost. If you are broke and cannot afford it, then don't pass the law. It should be as simple as that.

In reality, however, there is no question that there is a relationship. We are already in a financial bind because you have eliminated or reduced federal aid programs such as revenue sharing because of the budget problem. Congress will not stop enacting laws simply because there is a budget deficit. You will continue to pass the laws but shift the costs of implementing the programs down to us at the state and local level. After Proposition 13 was passed in California, we have been repeatedly told by the locals that they will not implement any new state programs without sufficient state funding. I believe you, at the federal level, will hear the same from the state and the local governments. If federal programs are to be implemented with any degree of success and to ensure the continuance of good intergovernmental relations, the reimbursement mechanism called for in S.483 must be adopted.

Question #5:

It is clear to me that your states' implementation experience could provide some guidance to use at the federal level as we work to refine the concepts and provisions of this bill. For example, one of the points Mr. Chan made is that California had to tighten up its definition of mandated cost in order to make the program more effective. That's a hard thing to do mid-stream in a program. Do you believe a preliminary study of the kind suggested in Title I of S.483 would help us at the federal level clarify what we mean by a federal mandate, and provide the basics for cost estimation which would be required to implement Title II?

Answer:

Yes, if our experience is any indication, you will need lots of information in formulating a workable definition. We have been working on it for over ten years, and still we find problems. I believe your committee staff has done an excellent job in drafting the language in the Title I reporting language, and you should gather some very useful information, not only on the definition, but how your program should run as well.

Regardless how precise the law may be written to define reimbursable costs there will be disputes generated by differences in the interpretation of the law. This is one of the reasons we feel that a commission like California's Commission on State Mandates be established as an independent federal agency to hear and rule on such disputed matters.

Question #6:

The last question I have is this. Some critics of mandate reimbursement suggest that it creates a perverse incentive for state and local officials not to make an effort to solve their problems because they know if they wait, the federal government will step in. In short, mandate reimbursement gives state and local governments a free ride. What has been the experience in your states? Is this something we should be worried about at the federal level?

Answer:

I don't know the experiences of other states. However, this is definitely not true in California. I went over the list of the programs we implemented in California under the mandated cost law and found an overwhelming majority of them are not the type of programs the local governments would take upon themselves to act. Some examples are: sick leave retirement credit for retired teachers, senior citizens' property tax postponement program, filing requirements for guardianships and conservatorships, and procedures for voter registrations. These types of programs do not benefit local governments directly and have no effect on local issues.

John J. Finnegan

Auditor, Commonwealth of Massachusetts

Written Testimony Delivered To The U.S. Senate

Subcommittee on Intergovernmental Relations

Concerning S.483

May 14, 1985

Mr. Chairman, members of the Committee:

In the late Seventies and early Eighties the voters of this country, in an angry response to ever escalating tax bills, dug in their collective heels and said, "no more!" The tax revolt was nationwide stretching from Proposition 13 in California to Proposition 2 1/2 in Massachusetts.

Proposition 2 1/2 became effective in the Commonwealth in January 1981 and imposed a spending cap on our cities and towns. After the passage of 2 1/2, no local community was allowed to raise taxes more than 2 1/2% over the total assessed valuation of its property in any one year. Proposition 2 1/2 also cut what had been a back-breaking motor vehicle excise tax down to manageable levels and, perhaps most important of all, it created the Division of Local Mandates (DLM) and placed that agency in the office of the State Auditor.

DLM has but a single charge under the law. Its job is to see to it that no new law, rule or regulation is passed or promulgated requiring local spending without making certain that state funds are provided to cover the additional costs. If a spending mandate is imposed on a city or town as part of any law passed by the Massachusetts Legislature without an appropriation of funds, the cities and towns can legally ignore such a law.

Almost since the day of its creation, the communities of Massachusetts have been appealing to the Division of Local Mandates for relief from what they saw as spending mandates. In case after case, DLM has investigated claims brought by communities against the state.

In 1984, the legislature in its wisdom decided that polling places should be kept open for an extra three hours on election day and passed a law to that effect. DLM was asked to rule on the law and the Division determined that new polling hours did indeed impose a spending mandate on the already hard-pressed cities and towns. The law was amended to include funding and the state now pays approximately $1 million to cover increased election costs.

Recently the Department of Public Health in Massachusetts changed the regulations for communities offering emergency ambulance service. These new rules mandated expensive new equipment, training and staffing levels. Local officials appealed to DLM and the Division ruled that the new regulations were spending mandates that imposed significant added costs on the communities. DLM ruled that the state must assure these added costs and that if it did not do so, the cities and towns could properly ignore the regulations. Since then, a compromise has been worked out and mandated costs have been virtually eliminated.

There are numerous other such cases but let me cite just one more that has become something of a cause celebre in my state. The Massachusetts Department of Environmental Quality Engineering ruled -- after 1981, after the passage of Proposition 2 1/2 -- that all solid waste disposal sites in the Commonwealth must be fitted with an impervious liner to protect ground water from harmful leachates, a bureaucratic word for liquid posions that leak into the aquifer.

Now, certainly, no reasonable person can argue with such a requirement. And no one in our cities and towns did argue. What they did question, however, was the cost of the liner and who would pay those costs. The small town of Norfolk appealed to our Division of Local Mandates. After months of painstaking investigation, DLM determined that the state must assume the costs for Norfolk's new landfill liner. It is a case -- and a ruling -- with far-reaching implications. The Commonwealth of Massachusetts has some 180 or more municipal landfill operations. We're going to discover, in the next few months, how many of these are entitled to state payments for liners. The costs to the state are going to be high and, as in all cases where large amounts of money are involved, state agencies responsible for assuring those costs are doing all that they can to obscure the issue. There's much talk about whether the DLM ruling is environmentally sound or responsible. It is a classic case of missing -- or ignoring -- the point. My Division of Local Mandates is not in the business of judging the merits or demerits of an unfunded mandate. The agency's only concern is determining if a law or rule or regulation imposes significant new costs and in what amounts. The environment, while certainly of deep concern to all of us, was not and could not be the issue. We deal strictly with law as laid down in Proposition 2 1/2.

On one hand, the Division of Local Mandates serves as an ombudsman for cities and towns. On the other it serves in a quasi-judicial capacity, ruling on the petitions brought before it by cities and towns.

DLM checks and balances the power of the Massachusetts Legislature and the Executive Branch. Any anti-mandate legislation on the Federal level should include the establishment of an agency or commission that is independent of both the Congress and the Executive Branch. States and local governments must be able to appeal to a body that is not influenced by partisan politics or administrative backlash. S 483, as it stands, does not offer states and local governments an affirmative appeal process. The bill only states that Federal courts cannot order states and local governments to comply with Federal mandates that are not funded.

The beauty of the Massachusetts anti-mandate provisions is that there is an excellent separation of powers; there are administrative and judicial appeal mechanisms; the law is broad in that it covers laws, rules and regulations and it is closely tied to Massachusetts' Administrative Procedures Act.

Mr. Chairman, members of the committee, I invite you to come to Massachusetts to see the Division of Local Mandates in action. The staff at DLM would be happy to arrange meetings with state and local officials who have first hand experience with the anti-mandate law and the work of the Division of Local Mandates.

RESPONSES TO WRITTEN QUESTIONS BY MR. FINNEGAN

Question #1

At our last hearing on this subject it was made clear that the fiscal notes law we have had on the books at the federal level since 1981 has not worked very well. Similarly, at the state level, the ACIR has documented numerous problems with many state fiscal note and mandate reimbursement laws. So, it's clear that a lot can go wrong. One question I would like all of you to answer is why you think your programs have been successful when so many others have not?

Answer

The anti-mandate provisions of Proposition 2 1/2, as codified in Massachusetts General Law c. 29, s. 27C, places a great deal of responsibility upon the State Auditor and the Division of Local Mandates to ensure that the Commonwealth assumes the cost of any mandated obligation upon any city or town. The anti-mandate provision addresses not just laws which impose costs but also administrative rules and regulations. In addition there is a provision which deals with increased exemptions from local taxation whose cost in terms of lost tax dollars must be made up by the Commonwealth of Massachusetts. If the state does not assume the cost of new initiatives after 1981 that it has placed on municipalities. the law, rule, or regulation in question is not effective until the general court has provided by general law and appropriation for the assumption of such cost. In essence the law, rule, or regulation is a nullity without funding. Mandates that are paid for would lapse if funding was terminated in subsequent years. Should municipalities incur costs the Division of Local Mandates would determine the deficiency and render a decision within 60 days. The community could then seek redress in Superior Court using the Division of Local Mandates deficiency determination which would be considered prima facie evidence of fact in this court proceeding.

Finally, the Division of Local Mandates was placed within the State Auditor's Office. As a separately elected constitutional officer, this provides the necessary independence from the executive and legislative branches of government to render fair and impartial decisions.

As you can see these safeguards clearly ensure the success of the Massachusetts anti-mandate law.

Question #2

As the sponsor of the State and Local Cost Estimate Act of 1981, I was interested to read in some of your statements that your mandate reimbursement program greatly improved the quality of the California's fiscal note process. Could you elaborate on this connection and provide us some examples?

Answer

Not applicable to Massachusetts.

Question #3

One of the principal objections to a mandate reimbursement bill is an obvious one: It will cost the federal government some money. And, to many, it seems pretty clear that we just can't afford this kind of a program in 1985. How much has mandate reimbursement cost in your states, and do you think it's been worth it? If asked to sum up, what do you count as the principal benefits coming out of your mandate reimbursement programs? Do you have any examples?

Answer

The local mandate program is an effective safeguard which protects cities and towns, strapped by the tax limitation provisions of Proposition 2 1/2, from costly, unfunded state-imposed mandates.

The Division of Local Mandates (DLM), operational since 1983, has issued formal mandate determinations totalling $8 million dollars. (This figure represents the monies owed by the Commonwealth to communities having incurred new costs complying with unfunded state mandates). The State Auditor through DLM has saved state taxpayers millions of dollars by having forced the executive and legislative branches to consider and assess the financial impacts of proposed state laws, rules, or regulations prior to their enactment or promulgation.

The benefits of our mandate program is illustrated in the passage in 1983 of a law now requiring polling places to be open at least 13 hours for the presidential primary, state primary, and general elections. Although the extension of voting hours is of benefit to voters, as well as to national, state, and local office-seekers, the Massachusetts Legislature did not appropriate state funding to communities to implement this important new program, as required by the local mandate statute. Based on DLM's ruling, the state is now committed to funding the $318,000 per election which DLM has estimated to be the state-wide implementation costs.

Another example involves DLM's participation in the 1983 passage of the Right to Know law. As a result, local officials are receiving the state funding necessary to implement the new statute, which provides that employees and community residents be informed in detail concerning possible hazardous and toxic substances to which they may be exposed.

Question #4

Each of you has talked to some extent about the political and fiscal climates in your states which brought about your mandate reimbursement programs -- Proposition 13 in California and Proposition 2 1/2 in Massachusetts. Tell me, do you see a relationship between cutting federal aid programs and the need for enacting a federal reimbursement program?

Answer

DEFINITELY. At the present time most cities and towns have become very dependent on various types of Federal Aid, especially Revenue Sharing, to supplement their budgets.

With the impending cut off of these funds it will leave most cities and towns scraping the barrel for money to make up the loss of these federal monies.

With the restrictions of Proposition 2 1/2 and the loss of the federal funds, no city or town will be able to implement any additional State or Federal mandate without some type of reimbursement program.

Question #5

It is clear to me that your states' implementation experience could provide some guidance to us at the federal level as we work to refine the concepts and provisions of this bill. For example, one of the points Mr. Chan made is that California had to tighten up its definition of mandated cost in order to make the program more effective. That's a hard thing to do mid-stream in a program. Do you believe a preliminary study of the kind suggested in Title I of s. 483 would help us at the federal level clarify what we mean by a federal mandate, and provide the basics for cost estimation which would be required to implement Title II?

Answer

The study or report required in Title I is designed to enumerate the costly requirements imposed on state and local government by the Federal government. Title II provides the basis for the funding of these requirements. The Commonwealth of Massachusetts, however, has a two-tiered system; one for mandates prior to 1981 and one for mandates after 1981. For those prior to 1981 there is Sunset Review Program. A catalogue lists all laws and regulations required by the state that affect local government. From this inventory an annual report will be submitted to the legislature suggesting that the laws or regulations be repealed, continued, or modified. For mandates that are enacted after 1981 the Division of Local Mandates responds to petitions from communities. The division monitors legislation acting on an ongoing basis to attempt to have as few mandates passed as possible.

The format of review suggested by Senate Bill No. 483 has two flaws which may hinder the enumerations of all mandates and the assumption of all costs. For example, the report required by Title I is to be prepared by the Director of the Office for Management and Budget or any other agency head to whom the responsibility is delegated. This executive office preparation does not allow for any other entity to comment as to what is included in the report. It is important to allow a petition process so as to incorporate all mandates, not just those identified by the executive office. The other problem area is with funding. It appears that the funding decisions are made prospectively based on estimates. A mechanism should be established whereby changes in the level of funding could be made as actual costs become known.

Question #6

The last question I have is this. Some critics of mandate reimbursement suggest that it creates a perverse incentive for state and local officials not to make an effort to solve their problems because they know if they wait, the federal government will step in. In short, mandate reimbursement gives state and local governments a free ride. What has been the experience in your states? Is this something we should be worried about at the federal level?

Answer

Our experience with the Massachusetts anti-mandate law reveals that communities are not interested in dragging their feet or acting irresponsibly when it comes to important public policy mandates. For example, cities and towns are paying for state mandated installation of impervious liners at municipal landfills even though the Division of Local Mandates has ruled that this requirement should be funded by the state. Affected communities have come up with substantial funds required to implement this mandate while the funding issue is in litigation. Another example is implementation of the local responsibilities of the Massachusetts Right to Know law. This program has been delayed due to slow implementation and lack of follow through by the state agencies involved; not because of foot dragging by local officials.

Our experience has consistently revealed that communities are willing to implement mandates voluntarily if adequate local funding or personnel are available, and then wait for state reimbursements. But, they are careful not to waive their rights under the anti-mandate law. Where there are no funds available, it is impossible for local Boards of Selectmen to implement the mandate unless the Town Meeting approves an appropriation for that purpose. A Town Meeting vote is also required to approve bonded indebtedness. Without this approval or state funding up front, local officials are powerless to implement mandated programs.

Municipalities can be exposed to liability claims if certain state mandates are not implemented. For instance, the Massachusetts Suicide Prevention Law requires jail cell improvements and changes in police procedures in order to make local lock-ups "suicide proof." Although this law was approved last year, implementation was not physically possible by the effective date, thirty days later. Another law had to be enacted delaying the effective date until funding and specifications questions could be settled and the actual construction could be accomplished. Otherwise, both state and local governments would have been exposed to increased liability in the event of prisoner suicides.

One experience with the Massachusetts anti-mandate law has proved that it is not "a perverse incentive for cities and towns not to make an effort to solve their problems." Under the local tax limitations imposed by the Massachusetts law known as Proposition 2 1/2, municipal assessments are held to a 2 1/2% annual increase. The 351 communities are also entitled to funding for state mandates under the same law. This "free ride" is not only their right it is also essential to the success of the tax limiting measure passed 60-40 by the voters of the Commonwealth.

RHODE ISLAND LEAGUE OF CITIES AND TOWNS

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Statement of
MR. KENNETH F. PAYNE
Executive Director
RHODE ISLAND LEAGUE OF CITIES AND TOWNS

on behalf of
THE NATIONAL LEAGUE OF CITIES

on
S-483
"INTERGOVERNMENTAL REGULATORY RELIEF ACT OF 1985"

before the
SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS
COMMITTEE ON GOVERNMENT AFFAIRS
UNITED STATES SENATE

May 14, 1985

Mr. Chairman and Members of the Intergovernmental Relations Subcommittee, the National League of Cities deeply appreciates the opportunity to testify before you today on S-483, the Intergovernmental Regulatory Relief Act of 1985.

My name is Kenneth F. Payne, I am Executive Director of the Rhode Island League of Cities and Towns. Rhode Island has a statute similar to S-483. I was fortunate to be able to work on drafting that statute and have since represented cities and towns before the Rhode Island Department of Community Affairs in the hearings the statute requires annually to establish lists of mandated costs.

I am certain that in the minds of Rhode Island local officials, no State law affecting local government passed during the last decade is more important than the mandated cost reimbursement statute. They refer to it constantly. And this is not because the statute has become a significant source of additional State aid to cities and towns; it has not. Total reimbursements statewide have yet to reach $100,000 annually.

Mandated cost reimbursement has changed the way State government thinks in Rhode Island. State legislators and State agency personnel now understand, "If we play, we pay." This is a good rule.

In the past, interest groups would go to the Rhode Island General Assembly and argue: "such-and-such is needed, you can get deserved credit for having acted favorably on it, and it will not cost you anything because cities and towns will have to pick-up the tab". Interest groups of all persuasions have been frustrated by the mandated cost reimbursement law: environmental groups have been unable to get laws requiring additional monitoring of effluent, public safety unions were unable to secure passage of a statute requiring the purchase of certain types of firefighting equipment, consumer and education groups failed in their efforts to require local districts to have separate courses in consumer education.

In each of the above instances, the State legislature decided that it was inappropriate for it to require local appropriations and expenditures, then

negotiations were successfully held to determine how the underlying purposes of the proposals could be achieved without the State mandating local spending.

Every year, there are hundreds of cases in Rhode Island where the mandated cost reimbursement statute stops costly State intrusions into local government before they happen.

If Rhode Island local officials were given the choice of either some increased State aid or retention of the mandated cost reimbursement statute, they would choose the latter.

What you are considering is genuinely watershed legislation.

I would now like to describe for you how Rhode Island's statute works. I shall follow that description with some observations about Rhode Island's experience and then conclude with some suggestions about issues you may wish to consider when acting on S-483.

1. Description of Rhode Island's Mandated Cost Reimbursement Statute

Rhode Island's statute, enacted in 1979, defines a State mandated cost as: "any state initiated statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues. When state statutory or executive actions are intended to achieve compliance with federal statutes or regulations or court orders, state mandates shall be determined as follows:

a. Where the federal statute or regulations or court order is discretionary, the state statutory or executive action shall be considered a state mandate ...

b. Where the state statutory or executive action exceeds what is required by the federal statute or regulation or court order, only the

provisions of the state action which exceed the federal requirements shall be considered a state mandate...

c. Where the state statutory or executive action does not exceed what is required by the federal statute or regulation or court order, the state action shall not be considered a state mandate...."

The statute goes on to divide State mandated costs into two categories: those subject to reimbursement and those not subject to reimbursement. The second category, mandates not subject to reimbursement, recognizes that the State has certain constitutional responsibilities and that there should not be statutory barriers to the State's taking actions to meet these responsibilities. State mandates not subject to reimbursement include:

(1) the holding of elections
(2) the assurance of due process
(3) the notification and conduct of public meetings
(4) the procedures for administrative and judicial review of actions taken by cities and towns
(5) the protection of the public from malfeasance, misfeasance, or nonfeasance by local government officials
(6) financial administration, including the levy, assessment and collection of taxes
(7) the preparation and submission of reports necessary for the efficient administration of state laws.

With regard to State mandated costs, the Rhode Island statute requires three things:

1. the preparation of a report identifying all State mandates created by statute between January 1, 1970 and January 1, 1979;
2. the inclusion of a clause in all legislation fiscally affecting cities and towns enacted after January 1, 1979, stating whether the act constitutes a State mandate, and if it does, whether the mandate is subject to reimbursement; and

3. the reimbursement of State mandates after January 1, 1979.

Little attention has been given to the first two of these requirements.

The third requirement is very important. Its implementation is according to the following procedure:

The Rhode Island Department of Community Affairs annually holds a hearing to determine whether any new State mandates were created during the preceding July 1 - June 30 period (the State's fiscal year). Cities and towns submit what they believe are the new State mandates.

After receiving and reviewing what is presented at the hearing, the Department issues a proposed list of new State mandates. There is a period of comment on the proposed list.

Once the comment period is over, the Department adopts the list of mandated costs subject to reimbursement. The list includes, for each mandate, the items subject to reimbursement. (An example of such a listing is included as an exhibit to this testimony.)

Cities and towns determine the cost of complying with State mandates each year and submit a report to the Department of Community Affairs annually by April 1, stating the amount for the preceding July 1 - June 30. These reports are subject to audit.

The Department computes the total cost of State mandates for the year and submits that amount to be included as a line item in the State budget.

The reimbursements to cities and towns are distributed in July of each year.

The entire process is treated as "contested case" rule making under the State Administrative Procedures Act. Appeals of the Department's decisions are to State Superior Court.

EXHIBIT 1

(Excerpt from "State Mandate Report", R.I. Department of Community Affairs, July, 1984)

Proposed Statutory Mandates

5. Public Laws 1983, Chapter 18--Hazardous Substances "Right-to-Know."

This statute requires cities and towns to assume new responsibilities with respect to employer-employee relations and public safety functions as they apply to hazardous substances right-to-know.

The primary responsibilities with respect to employer-employee relationship include:

1) Training of employees concerning responsibilities under the Act as well as training in the handling of hazardous substances in their respective workplaces.

2) Performing and maintaining up-to-date inventories and records of hazardous substances in the workplace and labeling such substances.

3) Requiring and analyzing material safety data sheets from vendors.

The primary responsibilities with respect to public safety include:

1) Receive, store, and maintain lists of hazardous substances by workplace in the community to be filed with the local fire department.

2) Dissemination of information gathered in 1 above to fire department employees and their representatives.

3) Training of firefighters with respect to the nature of the hazards, appropriate work practices, protective measures and emergency procedures.

Each of these new responsibilities entails local expense and is subject to reimbursement under the mandated costs statute.

DCA Analysis: This Act does establish new activities for local governments in such a way as to necessitate additional expenditures from local revenues.

DCA Conclusions: The extent to which Chapter 18 requires new cost to local government in the areas of employer-employee relations and public safety constitutes a reimburseable State mandate. The DCA will prepare and propose regulations designed to address these reimburseable costs.

2. Observations About the Rhode Island Experience

The most important thing about Rhode Island's experience with its mandated cost reimbursement statute is that is has slowed to a virtual stop the imposition of State mandates subject to reimbursement. It is good preventive medicine. Rhode Island government is healthier as a result.

This outcome was expected when the statute was enacted. Indeed, the mandated cost reimbursement law was designed with the assumption that little money would pass through it. Had cities and towns thought high levels of State mandating would continue after its passage, they would have insisted on up-front funding of mandates rather than after-the-fact reimbursements. Likewise, if the State legislature had thought there would be high levels of mandates subject to reimbursement, it would have been worried about run away out-of-pocket costs.

That the Rhode Island's mandated cost reimbursement statute is preventive medicine has been liberating. It has enabled the State to have a participatory process. Local officials have an opportunity to voice their concerns about what they think the new mandates are, and State officials have an opportunity to hear what is going on within government at the local level.

City and town leaders annually review new public laws and departmental regulations, they draw on their own experience, and they decide what they think the new mandates are. These opinions are then considered by the State which must make findings of fact and conclusions of law about each proposed mandate, knowing that a weak or self-serving response will cause ire among local officials and may result in litigation. So far, there have been no major disagreements about State mandates subject to reimbursement.

Exempting certain State mandates from reimbursement is constructive. For example, if changing voter registration requirements to prevent abuses was considered a State mandate subject to reimbursement, then the mandate reimbursement statute might be discredited as counter-productive. Because there are

reasonable exemptions, there are few efforts to circumvent the law by specific statute.

No new bureaucracy has been created in Rhode Island to administer the State mandate reimbursement program. This is a result of its basic design. Efforts to figure out what happened in the past have been kept to a minimum, and there is no requirement that State officials try to estimate what will happen in the future. The State does not examine its own actions to ascertain whether something it has just done may be a mandate and to project what the local cost of that mandate may be. The simplicity of the Rhode Island statute has worked to keep mandating to a minimum. When State officials are truly aware that good intentions may boomerang and hit them in the pocketbook, they stay alert.

3. Conclusion: The Importance of S-483

For Rhode Island, S-483 is one of the most important pieces of federal legislation being considered this year. Mayors, City Managers, and Council Members were pleased to learn of the bill and very glad to pay my way down to testify on it.

Controlling federal mandating will be a great step forward. It will improve intergovernmental relations.

Because the responsibilities of the federal government are so complex, and because the system of State, country, local and special district government varies so across the nation, the review of intergovernmental regulations required by Title I is an important and necessary first step. Rhode Island is a tiny state with a very simple structure of government and relatively few intergovernmental responsibilities, therefore, understanding the dynamics of mandating was easy. The situation at the federal level is the opposite, therefore, study is necessary and appropriate.

In Rhode Island, the State mandate reimbursement statute has not resulted in abandoning efforts to promote justice or improve the general welfare. These have continued, but with greater recognition that the level of government that makes a decision should pay for implementing the decision. The Rhode Island law has resulted in the passage of more enabling legislation confering powers on local governments rather than requiring them to do things, has fostered debate and negotiations at the local level about how to deal with important issues, and has inspired further search for creative solutions to governmental problems. Section 103 of S-483, "Alternative Means of Regulation" should be taken seriously - it is potentially a key provision not a sop.

Meeting human needs is a basis for partnerships in intergovernmental action. Each partner, federal, State, and local government, has a role to play, -- especially when human needs result from circumstances beyond the control of the State or local government. The withdrawal of the federal government from the partnership is effectively a mandate on State and local government because the need itself and the necessity of action have not gone away. Having a State mandate reimbursement law in Rhode Island has not resulted in the State's forswearing its responsibilities.

An effort by the federal government to clarify what precisely are federal mandates and how much they should cost, will be beneficial at the local level. There is a tendency on the part of the State officials to say, "the devil made me do it", and that devil is often later identified as the federal government. Thus, the federal government is not infrequently blamed for State initiatives and programs that are unpopular and onerous at the local level. Some federal agency officials seem to concur in this practice because the price of being called a devil is a small one to pay to see a program level imposed that they could not get passed by Congress.

Controlling mandating costs could increase respect for the federal government among local officials.

I must end with a statement of concern: unless there is reimbursement for federally mandated costs, the efforts to control them may decline. The annual review of intergovernmental regulations could become a paper exercise that is disregarded and allowed to collect dust.

Title II is critical to having this extraordinarily important effort succeed in the long run.

Thank you very much.

Senator DURENBERGER. The subcommittee is now recessed.

[Whereupon, at 12 noon, the subcommittee was recessed, to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

99TH CONGRESS
1ST SESSION

# S. 483

Entitled the "Intergovernmental Regulatory Relief Act of 1985".

IN THE SENATE OF THE UNITED STATES

FEBRUARY 20 (legislative day, FEBRUARY 18), 1985

Mr. DURENBERGER (for himself and Mr. WILSON) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

# A BILL

Entitled the "Interngovernmental Regulatory Relief Act of 1985".

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Intergovernmental Regulatory Relief Act of 1985".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) Federal regulation of State and local governments has become increasingly extensive and intrusive in recent years;

(2) such regulation has, in many instances, adversely affected State and local governments by placing excessive fiscal burdens on such governments;

(3) such excessive fiscal burdens have weakened the foundation of the Federal system of government; and

(4) a lack of adequate fiscal resources to carry out necessary Federal regulation of State and local governments in complying with any intergovernmental regulation which takes effect on or after the date of enactment of this Act;

(b) Therefore it is the purpose of this Act to etablish procedures to—

(1) assure that the Federal Government pays the total amount of additional direct costs incurred by State and local governments in complying with any intergovernmental regulation which effect on or takes after enactment of this Act;

(2) assure that the burden on State and local governments resulting from compliance with intergovernmental regulations in effect before the date of enactment of this Act is reduced to the minimum level consistent with achieving major national objectives; and

(3) assure that the Federal Government ultimately pays the total amount of additional direct costs in-

curred by State and local governments in complying with intergovernmental regulations.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

(1) "additional direct costs" means the amount of costs incurred by a State or local government solely in complying with an intergovernmental regulation promulgated pursuant to a Federal law concerning with a particular activity which is in excess of the amount that such State or local government would be required to expand in carrying out such activity in the absence of such law, except that such term does not include any amount which a State or local government is required by law to contribute as a non-Federal share under a Federal assistance program;

(2) "compliance reforms" means market oriented procedures to replace or supplement strict governmental monitoring and enforcement activities, including the establishment and enforcement of penalties for noncompliance with Federal regulations that reflect the degree of such noncompliance, and the establishment of procedures to permit compliance with State or local regulations in lieu of compliance with Federal regulations;

(3) "Director" means the Director of the Office of Management and Budget;

(4) "economic incentives" means the process of making price corrections in the marketplace through governmental fees or subsidies that encourage or discourage activities in accordance with public policies;

(5) "Federal agency" has the meaning given to the term "executive agency" in section 6501(3) of title 31, United States Code;

(6) "Federal assistance" means any assistance provided by a Federal agency in the form of grants, loans, loan guarantees, property, cooperative agreements, or technical assistance to State and local governments or other recipients, except that such term does not include direct cash assistance to individuals, contracts for the procurement of goods or services for the United States or insurance; and

(7) "intergovernmental regulation" means a regulation promulgated by a Federal agency that requires a State or local government to take certain actions or requires State or local governments to comply with certain specified conditions in order to receive or continue to receive Federal assistance and which requires the termination or reduction of such assistance if such government fails to comply with such conditions:

(8) "local government" has the same meaning as in section 6501(6) of title 31, United States Code;

(9) "marketable rights" means the process for allocating scarce resources through the establishment of rights that can be traded or sold among bidders, rather than through the distribution of resources through the issuance of permits by a Federal agency;

(10) "performance standards" means the criteria or goals that must be attained to comply with a Federal regulation, and does not include a detailed specification of the means of compliance;

(11) "significant law" means any Federal law which is likely, in the judgment of the Director of the Congressional Budget Office, to result in total additional direct costs to all State and local governments of $100,000,000 or more in any fiscal year, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government;

(12) "small government" means a government of a city, county, town, village, school district, or other special district established under State law which has a population of less than fifty thousand;

(13) "special provisions for small governments" means requirements for small governments contained in an intergovernmental regulation which are different from the requirements included in such regulation for other governments, and includes simplified compliance

methods designed to reduce administrative burdens on small governments and reduced standards and modified compliance mechanisms which are proportional to the capabilities of small governments to comply with such regulation; and

(14) "State" means each of the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

## TITLE I—REVIEW OF INTERGOVERNMENTAL REGULATIONS

### REPORT REQUIRED

SEC. 101. (a) Not later than thrity days after the date on which the President transmits a budget for a fiscal year to the Congress pursuant to section 1105 of title 31, United States Code, the President shall submit to the Congress a report specifying and evaluating the economic costs, noneconomic costs, and additional direct costs which have been incurred or which will be incurred by State governments and local governments in complying with intergovernmental regulations during the most recently completed fiscal year, the fiscal year in progress, and the first two fiscal years immediately succeeding the fiscal year in progress.

(b) Each report required under subsection (a) shall include—

(1) a list of each intergovernmental regulation in effect during each fiscal year for which the report is made and a citation of statutory and administrative authority for each such intergovernmental regulation;

(2) an estimate, for each such intergovernmental regulation, of—

(A) the total amount of economic costs, non-economic costs, and additional direct costs that have been incurred or will be incurred in each such fiscal year by the government of each State and all local governments in such State in complying with such regulation in each such fiscal year; and

(B) the ratio (stated as a percentage) which the total amount of additional direct costs that have been incurred or will be incurred by all local governments in a State in complying with such regulation in each such fiscal year bears to the total amount of additional direct costs that have been incurred or will be incurred by the government of such State and all local governments in such State in complying with such regulation in such fiscal year;

(3) an estimate, for each such intergovernmental regulation, of the economic and noneconomic benefits that will be provided in each such fiscal year to each State government and all local governments in such State as a result of compliance with such regulation during each such fiscal year;

(4) recommendations for changes in laws and regulations that will reduce the costs specified pursuant to paragraph (2), or that will achieve a more favorable balance between the benefits specified pursuant to paragraph (3) and the costs specified pursuant to paragraph (2); and

(5) proposals for legislation, and a statement of planned administrative actions, to implement the recommendations specified pursuant to paragraph (4).

(c) In preparing the report required by subsection (a), the President shall consider the potential for reducing costs incurred by State and local governments in complying with intergovernmental regulations through the promulgation of intergovernmental regulations which utilize means such as performance standards, special provisions for small governments, marketable rights, economic incentives, compliance reforms, and simplified procedures to certify the compliance of Federal assistance recipients with Federal requirements.

PROCEDURES FOR PREPARATION OF REPORT

SEC. 102. (a) The President may delegate to the Director or to the head of any other Federal agency the responsibility for preparing the annual report required by section 101.

(b) In carrying out the provisions of this title, the President, the Director, or the head of a Federal agency to which a delegation is made under subsection (a), shall, after providing public notice and an opportunity for comment in accordance with section 553 of title 5, United States Code, prescribe standards to be used by Federal agencies in estimating the costs of compliance with, and the benefits provided by, intergovernmental regulations administered by such agencies. Such standards may be revised from time to time to reflect changes in relevant economic and social circumstances and advances in pertinent branches of knowledge.

(c) the standards prescribed under subsection (b) shall provide, to the extent possible, for—

(1) uniform categories of costs of compliance with, and benefits provided by, intergovernmental regulations;

(2) methods to be used by Federal agencies in compiling the information required to be submitted under subsection (d) which shall be designed to—

(A) minimize the costs that will be incurred by the State and local governments and the Fed-

eral assistence recipients from which such information will be collected; and

(B) ensure the collection of reasonably accurate information in a form that will be useful to States in complying with section 204(c);

(3) methods for preventing disclosure of information about individuals or businesses the confidentiality of which is protected under under Federal law;

(4) procedures to be followed by Federal agencies in reporting the information required to be submitted under subsection (d); and

(5) such other procedures and guidelines as may be necessary for the implementaion of this title.

(d) Each year, at a time prescribed by the President, the Director, or the head of the Federal agency to which a delegation is made under subsection (a), the head of each Federal agency which administered any intergovernmental regulation during a fiscal year for which a report is required under section 101, shall prepare and submit to the President, the Director, or such agency head, a report setting forth, for each such regulation, the information required to be included for such regulation in the report required under section 101.

## TITLE II—COMPENSATION OF STATE AND LOCAL GOVERNMENTS FOR ADDITIONAL DIRECT COSTS

### COMPENSATION REQUIRED

SEC. 201. (a) A Federal agency or a court of the United States shall not require State governments or local governments to comply with, in any fiscal year, any intergovernmental regulation which takes effect on or after the date of enactment and which is promulgated pursuant to a significant law unless provisions of law have been enacted which provide a sufficient amount of funds for such fiscal year to reimburse such governments for the total amount of additional direct costs that will be incurred by such governments in complying with such regulation during such fiscal year.

(b)(1) For the fiscal year ending on September 30, 1987, and each of the succeeding fiscal years, a Federal agency or a court of the United States shall not require State governments or local governments to comply with, in any fiscal year any governmental regulation which took effect prior to the date of enactment of this Act and which was promulgated pursuant to a significant law unless—

(A) provisions of law have been enacted which provide an amount of funds to reimburse such governments for the additional direct costs that will be incurred by such governments in complying with such

regulation in such fiscal year which is equal to or in excess of the amount described in paragraph (2) for such fiscal year;

(B) provisions of law have been enacted revising the significant law under which such regulation was promulgated, and such revisions will result in the reduction of such fiscal year by an amount equal to or in excess of the amount described in paragraph (2) for such fiscal year;

(C) administrative actions have been taken which will result in the reduction of such additional direct costs for such fiscal year by an amount equal to or in excess of the amount described in paragraph (2) for such fiscal year;

(D)(i)(I) provisions of law have been enacted which provide an amount of funds to reimburse State and local governments for such additional direct costs for such fiscal year which is less than the amount described in paragraph (2) for such fiscal year;

(II) provisions of law have been enacted revising the significant law under which such regulation was promulgated, and such revisions will result in the reduction of such additional direct costs for such fiscal year by an amount which is less than the amount described in paragraph (2) for such fiscal year; and

(ii) the sum of the amounts described in divisions (I), (II), and (III) of clause (i) with respect to a fiscal year is equal to or in excess of the amount described in paragraph (2) for such fiscal year.

(2) The amounts referred to in paragraph (1) for the fiscal years are as follows:

(A) FISCAL YEAR 1988.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 10 percent.

(B) FISCAL YEAR 1989.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 20 per centum.

(C) FISCAL YEAR 1990.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 30 per centum.

(D) FISCAL YEAR 1991.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 40 per centum.

(E) FISCAL YEAR 1992.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 50 per centum.

(F) FISCAL YEAR 1993.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 60 per centum.

(G) FISCAL YEAR 1994.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 70 per centum.

(H) FISCAL YEAR 1995.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 80 per centum.

(I) FISCAL YEAR 1996.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 90 per centum.

(J) FISCAL YEAR 1997 AND SUCCEEDING FISCAL YEARS.—An amount equal to the product of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in such fiscal year multiplied by 100 per centum.

(c) For purposes of this section, the total amount of additional direct costs that will be incurred by State governments and local governments in complying with an intergovernmental regulation in any fiscal year shall be the total amount of such costs for such regulation estimated by the Director of the Congressional Budget Office in the report required under section 202 for such fiscal year.

55-065 O - 86 - 7

REPORT BY THE DIRECTOR OF THE CONGRESSIONAL BUDGET OFFICE

SEC. 202. (a) For each fiscal year in which an intergovernmental regulation promulgated pursuant to a significant law will be in effect, the Director of the Congressional Budget Office shall prepare and transmit to the President and the Congress a report specifying, for such fiscal year and each of the two fiscal years succeeding such fiscal year, an estimate of the total amount of additional direct costs that will be incurred by State governments and local governments in complying with such regulation in each such fiscal year.

(b) In preparing each report required by subsection (a0, the Director of the Congressional Budget Office shall transmit each report required by subsection (a) for a fiscal year to the President and the Congress by September 1 of the fiscal year preceding such fiscal year.

IMPLEMENTATION

SEC. 203. For each fiscal year in which an intergovernmental regulation promulgated pursuant to a significant law will be in effect, the chairman of the committees of the Senate and the House of Representatives having legislative jurisdiction over such significant law shall propose, to an appropriate bill or resolution providing funds for such fiscal year, an amendment containing provisions to appropriate funds to reimburse State governments and local governments for the additional direct costs incurred in complying with such

regulation. The amount of funds proposed to be appropriated by such amendment shall be equal to or in excess of the amounts described in subsection (a), subsection (b)(1)(A), or subsection (b)(1)(D) of section 201, as the case may be.

PROCEDURES FOR REIMBURSEMENTS TO STATE AND LOCAL GOVERNMENTS

SEC. 204. (a)(1) The head of each Federal agency which administers an intergovernmental regulation promulgated pursuant to a significant law shall pay to each State government in each fiscal year the amount determined pursuant to this section to reimburse the State government and local governments in the State for the additional direct costs incurred by such governments in complying with such regulation in such fiscal year.

(2) A State government which receives payments under this section for reimbursement for additional direct costs incurred in complying with an intergovernmental regulation in any fiscal year shall pay to each local government in the State the amount determined pursuant to this section to reimburse such local government for the additional direct costs incurred by such local government in complying with such regulation in such fiscal year.

(b) The total amount to be paid to a State to reimburse the government of the State and local governments in the State for additional direct costs incurred by such governments in complying with an intergovernmental regulation in

any fiscal year shall equal an amount for reimbursement of additional direct costs for all State governments and local governments described in subsection (a), subsection (b)(1)(A), or subsection (b)(1)(D)(I) of section 201, as the case may be, with respect to such regulation for such fiscal year, as the total amount of additional direct costs with respect to such regulation which are specified in such report for all State governments and all local governments for such fiscal year.

(c)(1) The total amount to be paid by a State government to local governments in such State to reimburse such governments for additional direct costs incurred by such governments in complying with an intergovernmental regulation in any fiscal year shall be equal to the product of the amount paid under subsection (b) to such fiscal year multiplied by the ratio determined by the President for such State with respect to such regulation for such fiscal year pursuant to section 101(b)(2)(B).

(2)(A) A State government which receives payments under this section to reimburse local governments in the State for the additional direct costs incurred by such governments in complying with an intergovernmental regulation in any fiscal year shall pay to each such local government an amount equal to the product of—

(i) the total amount determined under paragraph (1) with respect to such regulation for such fiscal year, multiplied by

(ii) the ratio (stated as a percentage and estimated by the State in accordance with subparagraph (b)) that the total amount of additional direct costs incurred by such local government in complying with such regulation in such fiscal year bears to the total amount of additional direct costs incurred by all local governments in such State in complying with such regulation in such fiscal year.

(B) Each State government which receives payments under this section for any fiscal year shall provide by law for the estimation of the amount of additional direct costs incurred by each local government in such State in complying with an intergovernmental regulation for which such payments are received. In providing for the estimation of such costs, the State shall establish procedures and methods for the estimation of such costs which are reasonably related to the actual additional direct costs incurred by such governments in complying with such regulation in such fiscal year.

EFFECT OF SUBSEQUENT ENACTMENTS

SEC. 205. No law enacted after the date of enactment of this title shall supersede the provisions of this title unless such law does so in specific terms, referring to this title, and declares that such law supersedes the provision of this title.

## TITLE III—MISCELLANEOUS

### COST ESTIMATES

SEC. 301. Section 403(c) of the Congressional Budget Act of 1974 is amended by striking out "$200,000,000" and inserting in lieu thereof "$100,000,000".

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 30 1985

Honorable David Durenberger
Chairman
Subcommittee on Intergovernmental Relations
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for inviting me to comment for the record on S. 483, the Intergovernmental Regulatory Reform Act of 1985. This Administration is supportive of the broad goal of regulatory reform that underlies this bill, and is also sympathetic to State and local concerns about the burdens imposed by some Federal regulations. I would like to take this opportunity to summarize some of the Administration's efforts toward Federal aid and regulatory reform directed toward State and local governments.

First, Federal assistance in this Administration is large. In 1985, budget authority for Federal grant-in-aid to State and local governments is expected to exceed $111 billion. This includes, according to OMB estimates, $21.8 billion for Medicaid; $14.7 billion for Federal-aid highways; $10.8 billion for subsidized housing; $4.0 billion for urban mass transportation; $3.6 billion for child nutrition; $3.5 billion for community development; $2.9 billion for training and employment services; $2.7 billion for social services; $2.4 bilion for wastewater treatment; and $1.2 billion for education for the handicapped.

Second, through various regulatory reform measures, this Administration has increased the flexibility of State and local governments in utilizing Federal assistance and implementing Federal requirements. President Reagan established the Presidential Task Force on Regulatory Relief in 1981. Regulatory relief for State and local governments was one of the major goals of the Task Force. The Task Force released a progress report in August 1982 that listed 24 regulatory actions underway to reduce significantly the burden on State and local governments. Those regulatory actions alone saved between $4 and $6 billion in total investment costs, and $2 billion in annually recurring costs. This progress report is attached for the record.

When the Task Force concluded its formal activity in 1983, continuing oversight was transferred to OMB. We are continuing to work with Federal agencies and the States to further the course of regulatory reform and improved intergovernmental

efficiency. Some representative examples of our accomplishments follow:

1. Schools. School administrators will spend less time each year filling out cost-accounting forms for the National School Lunch Program. They will also save $900-$2,950 million in investment costs and $70-$155 million annually as a result of the withdrawal of the Department of Education's proposed rules governing requirements for bilingual education.

2. Medicaid. In 1983, HHS issued several Medicaid rules in the areas of State residency requirements, quality control and co-payment, designed to relieve State governments of unnecessary administrative requirements, enhance flexibility, foster better program administration to meet the needs of recipients, and contain escalating program costs. Additionally, HHS published eight significant regulations giving new broad authority to serve beneficiairies in the most cost-effective ways. The regulations established new methods of setting reimbursement rates, new opportunities for cost-effective contracting, and more freedom in determining the scope of Medicaid services and coverage.

3. Health Planning. HHS has taken action to phase down inappropriate Federal intervention in State health planning and eliminate unnecessary restrictions. Waiver authority has been exercised to allow States to assume all health planning functions and to remove requirements for Federal project reviews. Paperwork requirements for local health planning have been reduced by an estimated 75%.

4. Environmental Implementation Plans. EPA has changed its procedures for reviewing State Implementation Plans (SIPs), which will save the States time, reduce uncertainty, and in some cases will have a direct effect upon when or whether industrial development occurs in a State. The new procedures grant the States greater flexibility, reducing the amount of time and resources that EPA needs to approve SIPs. Expedited review procedures, together with increased State discretion, allow the States and businesses to plan ahead and reduce costly delays. The backlog of SIPs has been significantly reduced.

5. Environmental Assistance Programs. In October 1982 EPA issued rules that significantly reduced the complexity of its assistance programs. They eliminated unnecessary requirements and clarified and consolidated various provisions. The rules eliminate the confusion of separate regulations for each environmental program by developing consistent requirements across programs. Cutting down on State administrative requirements will result in reduced paperwork burdens and considerable cost savings.

6. Urban Transportation Planning. In June 1983, DOT published a rule that increased flexibility at the State and local levels for planning highways and mass transit projects. The rule reduces administrative burdens, especially on small cities.

7. Job Training Partnership Act Regulations. The Department of Labor issued regulations that give State and local governments and private industry councils expanded authority to plan and operate job training programs. The rules allow training programs to be tailored to local needs. Additionally, the Governor of each State has increased authority to oversee the training programs in that State, to ensure that local needs are being met and that local resources are being effectively utilized.

To streamline the financial system for Federal aid, President Reagan issued Executive Order No. 12372, "Intergovernmental Review of Federal Programs." The Order gives States the authority to establish their own procedures for reviewing proposed Federal activities in their jurisdiction and requires Federal agencies to be more responsive to State and local concerns. A recent OMB evaluation found that the Executive Order has been successful in improving Federal agencies' responsiveness to State and local concerns, and also in reducing costly duplication of services. OMB is currently working with the Federal agencies and the States on ways to broaden the range of Federal activities reviewed by State and local officials. For example, at the request of State officials and OMB, HUD is removing the limits on the size of housing projects that can be reviewed under these procedures.

We agree that the problems of intergovernmental regulation are serious and difficult to solve. As these examples show, however, we are working to solve them and believe that we can further reduce Federal regulatory burdens on the States. If we can provide any additional information, please let me know.

Sincerely yours,

Douglas H. Ginsburg
Administrator
Office of Information and
Regulatory Affairs

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July 8, 1985

The Honorable Dave Durenberger, Chairman
Subcommittee on Intergovernmental Relations
United States Senate
Washington D. C. 20510

Dear Senator Durenberger:

The County of Los Angeles Board of Supervisors is pleased to submit comments to the Subcommittee on Intergovernmental Relations of the Senate Governmental Affairs Committee on the subject of Federal mandates and specifically S. 483, the Intergovernmental Regulatory Relief Act of 1985. This bill requires that State and local governments be reimbursed for all additional costs incurred by them in the implementation of federal mandates contained in subsequently promulgated rules or regulations. The bill also provides for a 12-year phase-in period during which the Federal government will gradually assume full responsibility in payment of the costs of all pre-existing mandates.

When one level of government recognizes its obligation to reimburse lower levels of government for the costs of mandated programs, an important principle is established, to wit: fiscal responsibility must accompany program authority.

Failure to pay for mandates imposed, in the words of county attorneys in a recent California state constitutional lawsuit on this question, separates "the ecstasy of imposing new programs from the agony of forcing people to pay for them." In the words of a California court, it avoids "the inevitable financial consequences of following political motivations." That is, the imposing level of government leaves to the legislative body of its victim the unpleasant burden of levying taxes necessary to pay the costs of the mandate.

A key provision in S. 483 is the provision making federal mandates unenforceable in court if there is not a sufficient federal appropriation to pay their cost. Our experience in California documents the necessity of this provision.

In California, the requirement that the legislature pay for mandates imposed on local governments became part of the State constitution in 1978. Nevertheless, the legislature regularly ignores the constitutional provision. Not only does it enact new mandates without appropriation it regularly refuses to appropriate funds subsequently even when the State Board of Control has endorsed local government reimbursement claims as legitimate.

So evident was legislative disregard for the constitutional requirement that counties finally sought declaratory relief in court and won a court decision that a number of specified unfunded mandates were unenforceable. We are aware of three other states, Massachusetts, Michigan and Missouri, in which local governments had to seek similar recourse in their state courts because of legislative failure to appropriate funds to pay for mandates.

In this time of need to reduce the federal deficit, the Congress will be understandably tempted to please their constituents by mandates on other government levels even while voting for a reduced federal deficit. Los Angeles County supports reducing the federal deficit and is willing to take up its share in the sacrifices necessary for this goal. On February 12, 1985, our Board of Supervisors even expressed its willingness to support reduction of critically needed General Revenue Sharing funds to the extent that the federal government reduces federally mandated costs to the county in an amount equal to that reduction.

Our county position is that all must share equitably in the sacrifices necessary to balance the budget. Congress can take a lead in this effort by publicly renouncing its power through unfunded mandates to require state and local legislators to levy taxes for programs Congress is unwilling to levy taxes for.

On behalf of the Los Angeles County Board of Supervisors, I urge the Subcommittee to act favorably on S. 483.

Very truly yours,

Melissa T. Scanlon

MTS:ss

cc: Each Supervisor
County Counsel
Executive Office

NATIONAL
ASSOCIATION
of
COUNTIES

440 First St. NW, Washington, DC 20001
202/393-6226

July 10, 1985

The Honorable Dave Durenberger
Chairman
Subcommittee on Intergovernmental
Relations
United States Senate
Washington, D.C. 20510

Dear Senator Durenberger:

The National Association of Counties (NACo) is pleased to provide our views to the Subcommittee on Intergovernmental Relations of the Senate Governmental Affairs Committee on the subject of Federal Mandates and the Intergovernmental Regulatory Relief Act of 1985.

This is a very important issue to NACo and its members. The hundreds of federal mandates with which counties must comply cost millions of dollars. The impact on local budgets becomes even more significant in times of declining federal assistance to counties. While mandates remain, the federal funds to implement them become ever more scarce.

We say hundreds of mandates at a cost of millions of dollars--it could be thousands of mandates costing billons of dollars. While some research has been done on this subject, no one knows the real figures and that is somewhat distressing. We know some of the cost of mandates to local governments, but the totals are not known and the final cost is rarely known when a law, regulation, or court decision is implemented.

In reality, what often happens is that counties are faced with the alternative of increasing revenues to fund the mandate or reducing or eliminating an existing service in order to free funds to pay for the mandate. This result can mean that what the locally elected county officials have determined as a priority program, service, or function, gets replaced by costly federally mandated programs or program requirements. These may in fact be national goals which are commendable, but nonetheless create additional costs or changes in locally determined priorities.

NACo's members are also concerned about the fact that federal assistance to help meet mandates is decreasing at a far faster rate than are the costs associated with mandates. General Revenue Sharing (GRS), which some in Congress and Administration would like to see phased out, is a prime example. NACo undertook a survey on GRS and found that 66 percent of the counties responding used GRS funds to assist in meeting mandates in six major categories: jails and detention facilities and operations, mental health care, handicapped access regulations, environmental regulations and solid waste disposal. If the $4.6 billion which goes to local government in the form of GRS payments disappears, there will be many additional examples of federal mandates looking for sources to fund them.

The Clean Water Act is another example of a federal mandate which has required extensive spending at the local level. While there has been a federal program of grants to help support the construction of wastewater treatment plants, there are now efforts underway to reduce the level of funding for these grants and to replace the grant program with a loan program.

Environmental protection, while a commendable goal, is a somewhat new non-traditional activity for local government mandated by the federal government. And while the mandated goals of the act for water quality remains the same, the funding has been severely curtailed. It appears as if there will be additional burdens in environmental compliance and costs in the future without accompanying financial aid. The 1984 amendments to RCRA contain mandated requirements in the areas of design of landfills and hazardous waste facilities, and leaking underground storage tanks for which many local governments may eventually be burdened with heavy monitoring and enforcement duties.

There are examples of costly federal mandates in other areas of concern to NACo, particularly in human services. Many counties are required to administer the AFDC program with payment error rates of 3 percent or less. Fiscal penalties are imposed when these targets are exceeded and will cost $1.3 billion in withheld AFDC reimbursement over the next three years. Error rate sanctions are also imposed in the food stamp program, with this mandate expected to cost a total of $200 million for states and counties administering the program.

The Foster Care program administered under Titles IV-E and IV-B carries several specific mandates that must be met for each child with respect to provision of preventive services, timeliness of case actions, and periodic court reviews of child placement decisions, if states are to receive their federal funds.

Similar constraints apply to the AFDC work requirements under Title IV-A, in which many welfare recipients must register for and be evaluated for employment and training that is not available, creating a costly administrative burden. Of particular note is an outdated rule (known as the 100-hour rule) by which AFDC

unemployed parents are determined to be fully employed, regardless of income, and thus ineligible for welfare, if employment exceeds 100 hours per month. This rule is particularly a disincentive to large refugee familes in states where the 100 hours at minimum wage ($3.35) is less than AFDC benefits.

The Urban Mass Transit Act has many mandates, including Buy America requirements, charter bus limitations, special fares for the elderly and the handicapped, and handicapped accessibility requirements. While the latter example is a mandate, the Department of Transportation's flexibility on this requirement is a good case of how a federal agency did respond to local concerns about mandates.

A very recent example of court imposed mandates is the Supreme Court's decision in the Garcia v. San Antonio case, which will bring county employees under the Fair Labor Standards Act, and cost local and state government an estimated $3 billion. This immediately raises the question of what services counties will cut to pay to this court imposed mandate.

NACo would like to comment briefly on S. 483, the Intergovernmental Regulatory Relief Act of 1985. Title I would provide that the President shall annually submit to Congress a report on the economic, noneconomic and direct costs which state and local governmental incur in complying with intergovernmental regulations. This becomes the first step in holding the federal government accountable for those costs it passes on to our members via its mandates. NACo policy on mandates would support Title I.

> "The national government must protect the integrity of its state and local government partners by establishing a fiscal impact policy. This policy must inform state and local governments of anticipated regulatory and fiscal impacts of proposed policies on state and local government."

The bill refers to mandates as, "Intergovernmental Regulations," which result in state and local governments incurring "additional direct costs." This is one of the many definitions of federal mandates of which NACo is aware. We see the definition of "mandate" as somewhat broader. Any additional costs that a county will incur because of a federal law, regulation, or court decision is a federal mandate.

Put another way, any additional county spending that is a result of a federal requirement which does not include the costs of implementing that requirement becomes a mandate. This definition includes requirements as well as constraints; what the federal government tells local government it must do as well as what it must not do. We would like to see this title amended to include the indirect costs to local government of federal actions.

Title II of S. 483 is somewhat more complicated. NACo supports the concept of reimbursement contained in this section, though we would submit that the definition of what is reimbursable may be too narrow and the mechanism for estimating costs and seeing that such costs are reimbursed needs additional refining. NACo would be pleased to work with the subcommittee members and staff on further development of this Title.

NACo commends you for your introducing S.483 and appreciates the opportunity for consideration of our viewpoint.

Sincerely,

Matthew B. Coffey
Executive Director

MBC/kf

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May 24, 1985

Sen. David F. Durenberger
Chairman
Subcommittee on Intergovernmental Relations
Committee on Governmental Affairs
SH-432 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Durenberger:

The National League of Cities was privileged to have recently testified before your subcommittee on two separate occasions. The purpose of both hearings was to receive testimony on legislation which you have introduced, S. 483, the Intergovernmental Relief Act of 1985. As we have testified, S. 483 is "genuinely watershed legislation" and we fully support the bill and your efforts toward its enactment.

It is in regard to this legislation that we submit here for inclusion in the hearing record of May 14, 1985 the attached written statement provided by the Michigan Municipal League. Michigan, like a handful of other states, has a state constitutional provision mandating state reimbursement of state mandated costs. It is our hope that the submission and consideration of this statement describing the Michigan reimbursement law will assist you and the members of the subcommittee in fashioning federal legislation similar in nature.

Once again, we appreciate having had the opportunity to present testimony on behalf of our nation's cities and trust that you will call upon us once again in the future for any assistance which we may be able to provide.

Sincerely,

George V. Voinovich, President
Mayor of Cleveland

Enclosure

55-065 364

*Past Presidents:* **Tom Bradley,** Mayor, Los Angeles, California • **Ferd L. Harrison,** Mayor, Scotland Neck, North Carolina • **William H. Hudnut, III,** Mayor, Indianapolis, Indiana • **Henry W. Maier,** Mayor, Milwaukee, Wisconsin • **Jeanie M. Rattley,** Councilwoman, Newport News, Virginia • **John P. Rousakis,** Mayor, Savannah, Georgia • **Charles Royer,** Mayor, Seattle, Washington • ***Directors:*** **Art Ashley,** Mayor, Nitro, West Virginia • **Rose Bessermen,** Council Member, Vancouver, Washington • **Robert R. Cantina,** Executive Director, Wyoming Association of Municipalities • **Henry Cook,** Council Member, Jacksonville, Florida • **Joe W. Davis,** Mayor, Huntsville, Alabama • **James E. Ferguson,** Mayor, Provo, Utah • **Donald Fraser,** Mayor, Minneapolis, Minnesota • **Terry Goddard,** Mayor, Phoenix, Arizona • **Ron Gonzales,** Council Member, Sunnyvale, California • **George D. Goodman,** Executive Director, Michigan Municipal League • **Daniel E. Griset,** Mayor, Santa Ana, California • **Richard Guthman, Jr.,** Council Member, Atlanta, Georgia • **Robert W. Harpster,** Executive Director, League of Iowa Municipalities • **Delores Hudson,** Council Member, Warrensburg, Missouri • **Brendan J. Kennedy,** Alderman, New Britain, Connecticut • **Dud Lastrapes,** Mayor, Lafayette, Louisiana • **Paul A. Lenz,** Mayor, Alton, Illinois • **Gerald McCann,** Mayor, Jersey City, New Jersey • **Brian J. O'Neill,** Council Member, Philadelphia, Pennsylvania • **Pamela P. Plumb,** Councilor, Portland, Maine • **Ruth H. Scott,** Council Member, Rochester, New York • **James W. Segel,** Executive Director, Massachusetts Municipal Association • **Lottie Shackelford,** City Director, Little Rock, Arkansas • **Raymond C. Sittig,** Executive Director, Florida League of Cities • **Donald A. Slaier,** Executive Director, League of Minnesota Cities • **Consuelo S. Thompson,** Mayor, Española, New Mexico • **Minetta C. Treach,** Mayor Pro Tem, Charlotte, North Carolina • **Donald Tucker,** Council Member, Newark, New Jersey • **Thomas X. White,** Council Member, Greenbelt, Maryland • **Louis Zapata,** Council Member, Fort Worth, Texas

Statement of the Michigan Municipal League

STATE REIMBURSEMENT FOR STATE MANDATED COSTS IN MICHIGAN

Michigan has a constitutional provision mandating state reimbursement of state mandated costs. This provision was put on the ballot and into the State Constitution by initiative petition approved by the voters in November, 1978. It took effect on December 22, 1978. The mandated cost provision is part of a lengthy and complicated set of ten sections imposing tax and other limitations on Michigan state and local levels of government. In summary the amendment provides that "property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified without direct voter approval. The state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local governments. A provision for emergency conditions is established and the retainment of voter approved bonded indebtedness is guaranteed."

The "state mandates" provision is a part of Section 29 of Article 9 and provides as follows: "A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and dispersed to pay the unit of Local Government for any necessary increased costs."

This provision was implemented by the Legislature through Public Act 101 of 1979 which defines state mandate narrowly to exclude:

1. statutes or constitutional amendments adopted pursuant to an initiative petition or state laws or rules enacted or promulgated to implement such a statute or amendment.

2. statutes or constitutional amendments placed on the ballot by the Legislature or laws or rules enacted or promulgated to implement such a statute or amendment.

3. a court requirement.

4. a due process requirement.

5. a federal requirement.

6. an implied federal requirement (where failure to comply would result in the loss of federal funds).

7. a state requirement that does not apply principally or exclusively to local governments.

8. a state requirement which allows local governments the option of performing the activity or service, but in doing so the local governments must comply with minimum standards.

9. a state requirement that changes the level of requirements, standards or guidelines of an activity or service which local government has the option of providing.

10. A state requirement enacted prior to the effective date of December 22, 1978.

Although the language of the anti-state mandate provision of the constitutional amendment is vulnerable to restrictive interpretation, the whole purpose of this provision is to prevent the legislature and state agencies from imposing new costs upon local governments. The implementing statute provides a number of additional "loopholes" which were concerns of the Michigan Municipal League and other local government associations in the state originally and which continue to be concerns. Let me give a few examples. The statutory definitions of "activity" and "service" seek to severely limit the scope of the constitutional provision by exempting many typical state mandates on local governments that the constitutional amendment clearly intended to control. These definitions effectively exclude, for example, possible future state mandates that municipal ambulances must carry three rather than two fire extinguishers, or that small villages or townships must have annual audits by C.P.A.'s rather than the presently required

biennial audits. These examples would be excluded under the statutory definition of "activity" or "service" which must meet the statutory definition of a "specific and identifiable program" or "administrative action" to be reimbursed; yet both obviously would impose significant costs on certain local governments.

Another examption says in effect that the Legislature can impose any mandate on local public agencies without paying the cost just so long as the mandate also applies to private entities as well. In this same connection, the definition of service and activity exempts public employee benefits which the Legislature can mandate in the future without paying the costs imposed on local government.

The enabling statute also requires the Legislature to annually appropriate an amount sufficient to reimburse each local unit of government for the necessary cost of each state requirement under the statute in advance. However, my understanding is that there have been no appropriations made by the Legislature under this provision. The reimbursements which have been made to local units of government have been pursuant to other statutory provisions independent of this enabling act.

The enabling statute also requires the preparation of a fiscal note to the Joint Legislative Committee on Administrative Rules and to the Director of the Department of Management and Budget to estimate the cost of a rule during its first three fiscal years of operation as part of the state rule-making process for any rules which would require a state disbursement. A similar requirement is made applicable in the legislative process. The Legislature is called upon to establish by joint rule a method for identifying whether proposed legislation would be a state mandate requiring reimbursement under the enabling act and for estimating the cost thereof for the first three fiscal years.

The administrative procedure for disbursing necessary costs is set forth in the statute. A local government claims-review board is established to advise on the administration of the act and to consider appeals of disputed claims. The board consists of nine members appointed by the Governor with Senate advice and consent, each serving for three-year terms, and at least four of which must be representatives of a local unit of government. To my knowledge, the board has not been active at all and there are currently six vacancies to be filled.

The nature of the constitutional language is such that an inventory of state mandates in existence before the reimbursement requirement went into effect was needed. Accordingly, the Department of Management and Budget tabulated and published a catalog of existing state requirements imposed on Michigan local governments. This report was published in January, 1980. Although the statute calls for an annual updating which identifies new state requirements requiring reimbursement and each action which imposes a cost on local government not reimbursable under the statute, there has been no published updating in the interim.

This inventory identifies each mandate in fairly specific terms, the supervising state agency, and the categories of local units affected by such mandate (cities, villages, townships, counties, school districts, community college districts, intermediate school districts, and authorities). No attempt has been made to identify dollar costs to local units, either for individual programs or in the aggregate.

Under the Michigan approach there is always the question as to whether or not a particular rule or legislative bill affecting local units is a mandate

reimbursable within the meaning of the constitutional language and within the definitional language of the statute. Some of the state mandates which have raised this issue in recent years include: state specifications for landfill operations under the solid waste management act and rules, firefighter overtime pay under the state minimum wage act, special elections ordered by the State Boundary Commission, the equalization of property by class, the cost of complying with legislation converting misdemeanors into civil infractions, unemployment compensation cost increases, retainage required in public construction contracts, and the cost of administering community service in sentences by judges, and the required substitute of flags and flag holders for metal markers on veterans' graves in municipal cemeteries. Accordingly, the determination of whether a mandated cost is reimbursable or not in effect rests with a declaration of the Legislature or enforcement through the courts. Absent either legislative or judicial declaration, there tends to be confusion and uncertainty as to what local officials should do by way of conforming to a state mandate, ignoring it until an appropriation is made and dispersed, submitting a claim to the state for reimbursement of the costs of complying, or litigating the question.

There have been instances where the Legislature has expressly provided for the reimbursement of certain expenses incurred in connection with carrying out mandated duties. In one instance mailing costs which were reimbursable by express legislative provision aggregated $200,000 but no money has been appropriated since these costs were incurred in 1981. Another instance involved a legislative commitment to reimburse for firefighter overtime hours under a state statute paralleling the federal FLSA overtime requirements. This mandate was in effect during the period of unconstitutionality of those federal requirements. Municipalities have been only partially reimbursed, in large part as a result of litigation which was pursued through the state court of claims.

It is difficult to demonstrate, and even more difficult to document, how effective the 1978 constitutional amendment on state mandated costs has been. The primary intention seems to have been to deter enactment by the Legislature of requirements which would impose additional costs upon local units of government and local taxpayers. The secondary intent is to require state reimbursement if the Legislature should impose additional cost-inducing mandates, notwithstanding the cost to the state. There have been problems in securing and enforcing the funding, and sufficient funding, of those mandates which are declared reimbursable by the Legislature. Local units have litigated to enforce and interpret the constitutional language.

Notwithstanding these difficulties, and the limited scope of reimbursement, Michigan has made a useful beginning toward a home rule principle which would recognize the fiscal stress on local units and local taxpayers imposed by state-mandated costs. The Michigan Municipal League has made proposals to complete the implementation of the mandated cost section of our Constitution, and to strengthen the existing machinery. In the 1985 budget and legislative fiscal program presented to the Governor's budget staff, we recommended that the Governor remind state agencies to review each item of legislation, rule, or other action proposed by the agency, to determine whether a state mandate would be imposed on local governments and, if so, that a local fiscal impact statement be prepared and submitted to the Department of Management and Budget at an early stage in the processs. An adequate fiscal analysis and an identification of cost-imposing rules and actions early in the process of their development are essential. We also have urged the Legislature to adopt joint rules to provide for a legislative review of mandates in pending legislation. This is essential in order to fulfill the Legislature's statutory commitment to implement a mandate.

identification and fiscal impact analysis procedure.

We have begun a process to associate state mandated local costs with property tax bills and rates. This perhaps will help to level off or even roll back state mandates. Mandated costs in their number, complexity, cost and cumulative impact on local units of government account for a major claim on the local property tax dollar. Stopping or paying for new mandates is a key to providing local property tax relief and to restoring local government discretion over locally raised tax revenues. We strongly commend to Congress the concept of reimbursing local units of government for costs which are mandated by Federal law or regulation.

Copies of the Michigan constitutional provision, the Michigan statute, and the policy resolution on state payments to local units for state mandated costs, adopted by the membership of the Michigan Municipal League are attached for your information.

# Resolutions

## as adopted by the Membership of the Michigan Municipal League September 13, 1984

Resolution No. 1

**State Payments to Local Units for State-Mandated Costs**

WHEREAS, the Michigan Municipal League has long opposed imposition by the Legislature upon cities or villages of any obligation or duty which requires the expenditure of money, directly or indirectly, unless the Legislature shall make provisions for the reimbursement of cities and villages for the discharge of such obligation or duty, and

WHEREAS, the problem of State-imposed requirements on local government has worsened in recent years as the Legislature establishes new programs which impose financial burdens on local government or which require administration and therefore added administrative costs, and

WHEREAS, more recently Congress has begun to mandate new costs on local units of government which will have severe financial implications, and

WHEREAS, such additional costs have been and are being imposed without careful consideration of their fiscal impact or with virtually no analysis of the cost as compared to the benefit, or of their cumulative cost on local taxpayers or on their impact on the limited capacity of the local property tax base to finance such mandated costs, and

WHEREAS, the Governor has recently established a review procedure for State agencies to comment on the fiscal and other impact of State legislation affecting local government, and

WHEREAS, no actual fiscal analysis of proposed State legislation is actually being made, and

WHEREAS, the electorate approved a tax limit amendment to the State Constitution which requires a State appropriation to fund any new activity or service or an increase in the level of activity or service required of local units of government by the Legislature or any State agency, and

WHEREAS, the Legislature in implementing the tax limit amendment by enactment of Act No. 101 of 1979 drastically reduced the scope of State disbursement required by such amendment, and

WHEREAS, litigation involving claims for reimbursement for firefighter overtime pay mandated by Act 604, P.A. 1978 has been resolved by court of claims and appeals court decisions holding that State reimbursement is required by Act 604 and other litigation involving the costs of compliance with the Solid Waste Management Act, Act 641, P.A. 1978 is pending in the courts, and

WHEREAS, local units have submitted claims for State reimbursement of mandated costs which remain unreimbursed, contrary to constitutional and statutory requirements, due to no legislative appropriation, thereby nullifying the reimbursement requirement of the constitution and putting local officials into the dilemma of litigating or not complying with State statute, and

WHEREAS, Michigan municipalities are in a financial crisis brought on by these imposed costs, inflation and recession pressures and by budgets at or near their charter or statutory limitations;

NOW THEREFORE BE IT RESOLVED, That the Michigan Municipal League in convention assembled this 13th day of September 1984 urges the Governor to strengthen the existing executive procedure of legislation affecting local government by requiring an analysis to establish specific estimated costs as a basis for reimbursement, and urges the Governor to support and the Legislature to enact legislation to appropriate the necessary funds for prompt payment to each local unit of government for the full cost of performing new services or increasing the level of existing services, to comply with new regulations mandated by the State and,

BE IT FURTHER RESOLVED, That the Michigan Municipal League urges that, as part of such legislation, the Legislature require an appropriate legislative agency to determine whether any bill introduced in the legislature, or amended on the floor of either Senate or House, requires reimbursement to local units of government, and to prepare specific estimated costs of the amount of reimbursement required, for the purpose of informing members of the Legislature and the general public of the fiscal impact of all legislation imposing new requirements or responsibilities on local units of government, irrespective of whether or not such costs are constitutionally required to be paid by the State, and

BE IT FURTHER RESOLVED, That the State observe the integrity of Section 29 and Section 30 of Article IX of the State Constitution, which together require State reimbursement of State-mandated costs and no reduction in the proportion of total State spending paid to local units of government as a group, by refraining from paying State-mandated costs from State revenue sharing or any other State-funded programs already constituting the local proportion of total State spending; and

BE IT FURTHER RESOLVED that the State Legislature should appropriate funds to pay for the firefighter overtime claims as reimbursement owed to municipalities under Act 604 of 1978, pursuant to a 1982 Michigan Court of Claims decision and order.

Resolution No. 2

**Pension Legislation Moratorium**

WHEREAS, the Michigan Legislature in recent years has approved proposals to increase the pension benefits to certain employees of municipalities without making these benefits optional with the local unit of government, and without full information on the cost impact of such proposals, the result of which is to impose significantly higher costs on local government which are not reimbursed by the State, and

WHEREAS, serious underfunding of public retirement systems may occur as a result of rapidly accelerating pension costs, and

WHEREAS, in view of the July, 1983, decision of the U.S. Supreme Court relating to pension benefits for men and women and national studies recently completed or pending will be the basis for Congress to consider Federal Legislation affecting and regulating local retirement systems, including mandatory social security coverage for all State and local government employees coordinated with existing retirement systems, and

WHEREAS, a preliminary State study of State and local pension systems, completed by the Department of Management and Budget points up the need for a comprehensive review of policies of all public retirement systems in order to provide adequate data for a cost-benefit analysis which the Legislature can consider before any further changes are made in State and local pension systems and

WHEREAS, State legislation has been enacted which would create a State pension law review commission as a permanent State agency to monitor all public employee retirement funds in the State and to analyze the fiscal and other impacts of proposed State legislation prior to adoption by the Legislature but which commission has neither been appointed nor funded;

NOW THEREFORE BE IT RESOLVED, That the Michigan Municipal League in convention assembled this 13th day of September 1984 urges the Governor and the Legislature to observe a moratorium on all pension system legislation until such time as a comprehensive State study of public pension systems is completed, and that the State study be expedited. In any event, it is urged that as a matter of legislative policy no changes in State legislation affecting local pension systems be adopted which are not optional with the local governing body, and

BE IT FURTHER RESOLVED, That the Michigan Municipal League urges the Governor and the Legislature to involve the Municipal League and its members in processes undertaken to implement the recent U.S. Supreme Court decision and federal legislation.

# INITIATIVE PETITION
# AMENDMENT TO THE CONSTITUTION

PROPOSED CONSTITUTIONAL AMENDMENT
ADDING SECTIONS 25, 26, 27, 28, 29, 30, 31, 32, 33, & 34 TO ARTICLE IX AND AMENDING SECTION 6 OF ARTICLE IX

Article IX of the Michigan Constitution is hereby amended by adding Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, & 34, and by amending Section 6, such additions and amendments to read as follows:

Sec. 25. Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval. The state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in Sections 26 through 34, inclusive, of this Article.

Sec. 26. There is hereby established a limit on the total amount of taxes which may be imposed by the legislature in any fiscal year on the taxpayers of this state. This limit shall not be changed without approval of the majority of the qualified electors voting thereon, as provided for in Article 12 of the Constitution. Effective with fiscal year 1979-1980, and for each fiscal year thereafter, the legislature shall not impose taxes of any kind which, together with all other revenues of the state, federal aid excluded, exceed the revenue limit established in this section. The revenue limit shall be equal to the product of the ratio of Total State Revenues in fiscal year 1978-1979 divided by the Personal Income of Michigan in calendar year 1977 multiplied by the Personal Income of Michigan in either the prior calendar year or the average of Personal Income of Michigan in the previous three calendar years, whichever is greater.

For any fiscal year in the event that Total State Revenues exceed the revenue limit established in this section by 1% or more, the excess revenues shall be refunded pro rata based on the liability reported on the Michigan income tax and single business tax (or its successor tax or taxes) annual returns filed following the close of such fiscal year. If the excess is less than 1%, this excess may be transferred to the State Budget Stabilization Fund.

The revenue limitation established in this section shall not apply to taxes imposed for the payment of principal and interest on bonds, approved by the voters and authorized under Section 15 of this Article, and loans to school districts authorized under Section 16 of this Article.

If responsibility for funding a program or programs is transferred from one level of government to another, as a consequence of constitutional amendment, the state revenue and spending limits may be adjusted to accommodate such change, provided that the total revenues authorized for collection by both state and local governments does not exceed that amount which would have been authorized without such change.

Sec. 27. The revenue limit of Section 26 of this Article may be exceeded only if all of the following conditions are met: (1) The governor requests the legislature to declare an emergency; (2) the request is specific as to the nature of the emergency, the dollar amount of the emergency, and the method by which the emergency will be funded; and (3) the legislature thereafter declares an emergency in accordance with the specifics of the governor's request by a two-thirds vote of the members elected to and serving in each house. The emergency must be declared in accordance with this section prior to incurring any of the expenses which constitute the emergency request. The revenue limit may be exceeded only during the fiscal year for which the emergency is declared. In no event shall any part of the amount representing a refund under Section 26 of this Article be the subject of an emergency request.

Sec. 28. No expenses of state government shall be incurred in any fiscal year which exceed the sum of the revenue limit established in Sections 26 and 27 of this Article plus federal aid and any surplus from a previous fiscal year.

Sec. 29. The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18.

Sec. 30. The proportion of total state spending paid to all units of Local Government, taken as a group, shall not be reduced below that proportion in effect in fiscal year 1978-79.

Sec. 31. Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. If the definition of the base of an existing tax is broadened, the maximum authorized rate of taxation on the new base in each unit of Local Government shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the General Price Level from the previous year, the maximum authorized rate applied thereto in each unit of Local Government shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the General Price Level, as could have been collected at the existing authorized rate on the prior assessed value.

The limitations of this section shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidence of indebtedness or for the payment of assessments on contract obligations in anticipation of which bonds are issued which were authorized prior to the effective date of this amendment.

Sec. 32. Any taxpayer of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Sections 25 through 31, inclusive, of this Article and, if the suit is sustained, shall receive from the applicable unit of government his costs incurred in maintaining such suit.

Sec. 33. Definitions. The definitions of this section shall apply to Section 25 through 32 of Article IX, inclusive.

"Total State Revenues" includes all general and special revenues, excluding federal aid, as defined in the budget message of the governor for fiscal year 1978-1979. Total State Revenues shall exclude the amount of any credits based on actual tax liabilities or the imputed tax components of rental payments, but shall include the amount of any credits not related to actual tax liabilities. "Personal Income of Michigan" is the total income received by persons in Michigan from all sources, as defined and officially reported by the United States Department of Commerce or its successor agency. "Local Government" means any political subdivision of the state, including, but not restricted to, school districts, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government. "General Price Level" means the Consumer Price Index for the United States as defined and officially reported by the United States Department of Labor or its successor agency.

Sec. 34. The Legislature shall implement the provisions of Sections 25 through 33, inclusive, of this Article.

Section 6. (New language capitalized) Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.

The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds APPROVED BY THE ELECTORS or other evidences of indebtedness APPROVED BY THE ELECTORS or for the payment of assessments or contract obligations in anticipation of which bonds are issued APPROVED BY THE ELECTORS, which taxes may be imposed without limitation as to rate or amount; OR, SUBJECT TO THE PROVISIONS OF SECTIONS 25 THROUGH 34 OF THIS ARTICLE, to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district.

**PROVISIONS OF EXISTING CONSTITUTION ALTERED OR ABROGATED BY THIS AMENDMENT IF ADOPTED**
**- ARTICLE IX, SECTION 6 -**

Section 6. Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.

The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidences of indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued, which taxes may be imposed without limitation as to rate or amount; or to taxes imposed for any other purpose by the city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district.

program and child care fund. The system shall include data suitable for management reports to assist in the review and evaluation of individual foster care cases and the total programs.

**Employer's contribution to state employees retirement system.**

Sec. 33. The amounts appropriated in section 1 for the employer's contribution to the state employees retirement system shall be paid at the rate of 16.99% of salaries, wages, longevity, overtime, and annual leave paid upon termination.

**Statement showing costs of mandated environmental impact statements.**

Sec. 34. Before August 1, each principal department of government shall submit to the senate and house appropriations committees a detailed statement showing the costs incurred by the department in preparing mandated environmental impact statements.

**Legislative data processing projects; unobligated balance carried forward.**

Sec. 35. An unobligated balance for the legislative data processing projects appropriated in this act shall not revert to the state general fund at the close of the fiscal year ending September 30, 1980, but shall be carried forward for the duration of the projects.

This act is ordered to take immediate effect.

Approved August 3, 1979.

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**[No. 101]**

AN ACT to implement section 29 of article 9 of the state constitution of 1963; to provide a state disbursement to local units of government for costs required to administer or implement certain activities or services required of local units of government by the state; to prescribe the powers and duties of certain state agencies and public officers in relation thereto; and to provide for the administration of this act.

*The People of the State of Michigan enact:*

**21.231 Meanings of words and phrases. [M.S.A. 5.3194(601)]**

Sec. 1. For purposes of this act, the words and phrases defined in sections 2 to 4 shall have the meanings ascribed to them in those sections.

**21.232 Definitions; A to D. [M.S.A. 5.3194(602)]**

Sec. 2. (1) "Activity" means a specific and identifiable administrative action of a local unit of government. The provision of a benefit for, or the protection of, public employees of a local unit of government is not an administrative action.

(2) "Board" means the local government claims review board created by this act.

(3) "Court requirement" means a new activity or service or an increase in the level of activity or service beyond that required by existing law which is required of a local unit of government in order to comply with a final state or federal court order arising from the interpretation of the constitution of the United States, the state constitution of 1963, an existing law, or a federal statute, rule, or regulation. Court requirement includes a state law whose enactment is required by a final state or federal court order.

(4) "De minimus cost" means a net cost to a local unit of government resulting from a state requirement which does not exceed $300.00 per claim.

(5) "Department" means the department of management and budget.

(6) "Director" means the director of the department of management and budget.

(7) "Due process requirement" means a statute or rule which involves the administration of justice, notification and conduct of public hearings, procedures for administrative and judicial review of action taken by a local unit of government or the protection of the public from malfeasance, misfeasance, or nonfeasance by an official of a local unit of government, and which involves the provision of due process as it is defined by state and federal courts when interpreting the federal constitution or the state constitution of 1963.

**21.233 Definitions; E to N. [M.S.A. 5.3194(603)]**

Sec. 3. (1) "Existing law" means a public or local act enacted prior to December 23, 1978, a rule promulgated prior to December 23, 1978, or a court order concerning such a public or local act or rule. A rule initially promulgated after December 22, 1978 implementing for the first time an act or amendatory act in effect prior to December 23, 1978 shall also be deemed to be existing law.

(2) "Federal requirement" means a federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which requires the state to take action affecting local units of government.

(3) "Implied federal requirement" means a federal law, rule, regulation, executive order, guideline, standard, or other federal action which has the force and effect of law and which does not directly require the state to take action affecting local units of government, but will, according to federal law, result in a loss of federal funds or federal tax credits if state action is not taken to comply with the federal action.

(4) "Legislature" means the house of representatives and the senate of this state.

(5) "Local unit of government" means a political subdivision of this state, including school districts, community college districts, intermediate school districts, cities, villages, townships, counties, and authorities, if the political subdivision has as its primary purpose the providing of local governmental services for residents in a geographically limited area of this state and has the power to act primarily on behalf of that area.

(6) "Necessary cost" means the net cost of an activity or service provided by a local unit of government. The net cost shall be the actual cost to the state if the state were to provide the activity or service mandated as a state requirement, unless otherwise determined by the legislature when making a state requirement. Necessary cost does not include the cost of a state requirement if the state requirement satisfies 1 or more of the following conditions:

(a) The state requirement cost does not exceed a de minimus cost.

(b) The state requirement will result in an offsetting savings to an extent that, if the duties of a local unit which existed before the effective date of the state requirement are considered, the requirement will not exceed a de minimus cost.

(c) The state requirement imposes additional duties on a local unit of government which can be performed by that local unit of government at a cost not to exceed a de minimus cost.

(d) The state requirement imposes a cost on a local unit of government that is recoverable from a federal or state categorical aid program, or other external financial aid. A necessary cost excluded by this subdivision shall be excluded only to the extent that it is recoverable.

(7) "New activity or service or increase in the level of an existing activity or service" does not include a state law, or administrative rule promulgated under existing law, which provides only clarifying nonsubstantive changes in an earlier, existing law or state law; or the recodification of an existing law or state law, or administrative rules promulgated under a recodification, which does not require a new activity or service or does not require an increase in the level of an activity or service above the level required before the existing law or state law was recodified.

**21.234 Definitions; S. [M.S.A. 5.3194(604)]**

Sec. 4. (1) "Service" means a specific and identifiable program of a local unit of government which is available to the general public or is provided for the citizens of the local unit of government. The provision of a benefit for, or the protection of, public employees of a local unit of government is not a program.

(2) "State agency" means a state department, bureau, division, section, board, commission, trustee, authority, or officer which is created by the state constitution of 1963, by statute, or by state agency action, and which has the authority to promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. State agency does not include an agency in the legislative or judicial branch of state government, an agency having direct control over an institution of higher education, or the state civil service commission.

(3) "State financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law" means the percentage of necessary costs specifically provided for an activity or service required of local units of government by existing law and financed by the state on December 23, 1978. For purposes of this definition, necessary costs shall not include costs required of local units of government by an existing law which do not exceed a de minimus cost and costs imposed by existing law on a local unit of government which are recoverable from a federal or state categorical aid program, or other financial aid.

(4) "State law" means a state statute or state agency rule which is not existing law.

(5) "State requirement" means a state law which requires a new activity or service or an increased level of activity or service beyond that required of a local unit of government by an existing law. State requirement does not include any of the following:

(a) A requirement imposed on a local unit of government by a state statute or an amendment to the state constitution of 1963 adopted pursuant to an initiative petition, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.

(b) A requirement imposed on a local unit of government by a state statute or an amendment to the state constitution of 1963, enacted or adopted pursuant to a proposal placed on the ballot by the legislature, and approved by the voters, or by a state law or rule enacted or promulgated to implement such a statute or constitutional amendment.

(d) A due process requirement.

(e) A federal requirement.

(f) An implied federal requirement.

(g) A requirement of a state law which applies to a larger class of persons or corporations and does not apply principally or exclusively to a local unit or units of government.

(h) A requirement of a state law which does not require a local unit of government to perform an activity or service but allows a local unit of government to do so as an option, and by opting to perform such an activity or service, the local unit of government shall comply with certain minimum standards, requirements, or guidelines.

(i) A requirement of a state law which changes the level of requirements, standards, or guidelines of an activity or service that is not required of a local unit of government by existing law or state law, but that is provided at the option of the local unit of government.

(j) A requirement of a state law enacted pursuant to section 18 of article 6 of the state constitution of 1963.

**21.235 Disbursements to local units of government; appropriation; purpose; schedule of estimated payments; duty of governor; prorating amount appropriated; supplemental appropriation; administration of act; personnel; guidelines; forms. [M.S.A. 5.3194(605)]**

Sec. 5. (1) The legislature shall annually appropriate an amount sufficient to make disbursements to each local unit of government for the necessary cost of each state requirement pursuant to this act, if not otherwise excluded by this act.

(2) An initial disbursement shall be made in advance in accordance with a schedule of estimated payments established in each state requirement. The schedule of estimated payments shall provide that:

(a) The initial advance disbursement will be made at least 30 days prior to the effective date of the state requirement, and

(b) The first disbursement in each subsequent state fiscal year will be made no later than November 1.

(3) The governor shall include in a report which is to accompany the annual budget recommendation to the legislature, those amounts which the governor determines are required to make disbursements to each local unit of government for the necessary cost of each state requirement for that fiscal year and the total amount of state disbursements required for all local units of government.

(4) If the amount appropriated by the legislature for a state requirement is insufficient to fully fund disbursements for the necessary cost of a state requirement as required by this act, the director shall prorate the amount appropriated proportionately among those local units of government eligible for a disbursement for each state requirement in which the appropriation is insufficient. The director shall recommend a supplemental appropriation to the legislature sufficient to fully fund the disbursements for the necessary costs of each state requirement in which the initial appropriation was insufficient or which was imposed by court interpretation of a state law by requiring a new activity or service or an increase in the level of activity or service beyond that required by existing law. The legislature shall then appropriate the amount required in an appropriation bill introduced as a result of the request.

(5) The department shall administer this act and shall assign sufficient personnel to assure proper and adequate administration. The department shall

publish guidelines and furnish forms which shall be available to a local unit of government for submitting a claim for the disbursements required by this act.

**21.236 Fiscal note for rules requiring disbursement; request for appropriation. [M.S.A. 5.3194(606)]**

Sec. 6. For rules promulgated under a state law which require a disbursement under this act, the state agency promulgating the rules shall prepare and submit a fiscal note to the joint committee on administrative rules and to the director. The fiscal note shall include an estimate of the cost of the rule during the first 3 fiscal years of the rule's operation. The department shall submit a request for an appropriation, if necessary, for all rules approved pursuant to Act No. 306 of the Public Acts of 1969, as amended. The legislature shall then appropriate the amount required in an appropriation bill introduced as a result of the request.

**21.237 Joint rules; establishment; purpose; review of records; requesting audit. [M.S.A. 5.3194(607)]**

Sec. 7. (1) The legislature shall establish joint rules to provide for a method of identifying whether or not legislation proposes a state requirement as described in this act.

(2) The legislature shall establish joint rules to provide for a method of estimating the amount of a necessary cost required to provide disbursements to a local unit of government for legislation identified to propose a state requirement as described in this act.

(3) The estimate required by this section shall include the total amount estimated to make disbursements to all local units of government for the necessary costs required to administer or implement a state requirement during the first 3 fiscal years of the legislation's operation.

(4) The legislature may review any records pertaining to a claim or request an audit to be performed by the auditor general to verify the actual amount of the necessary cost of a state requirement.

**21.238 Certification of disbursements; procedure; report on prorated claims; adjustment of prorated claims; payment of disbursements. [M.S.A. 5.3194(608)]**

Sec. 8. (1) The department shall certify disbursements to each local unit of government for the necessary costs of state requirements from funds appropriated for that purpose.

(2) The department shall certify disbursements to a local unit of government as follows:

(a) Before a state requirement initially takes effect, the department shall notify each local unit to which the state requirement applies not less than 180 days before the effective date of the state requirement. The notice shall include a preliminary claim form for estimating the necessary cost of the state requirement for the initial state fiscal year in which the state requirement takes effect. The notice shall clearly indicate a date by which a claim must be postmarked to qualify for full advance disbursement as provided in subdivision (2)(b) of this section.

(b) To qualify for a full advance disbursement for a state requirement during the initial fiscal year in which a state requirement takes effect, each local unit of government desiring an advance disbursement shall submit the preliminary claim form provided by the department postmarked no later than 90 days before the effective date of the state requirement. If the claim is postmarked between 1 and

89 days before the effective date of the state requirement, the advance disbursement shall be equal to 90% of the estimated amount the unit would otherwise be entitled to.

(c) Each local unit of government shall submit a final claim for full reimbursement or final adjustment on a form provided by the department and postmarked not later than 90 days after the close of the local unit of government's fiscal year. If the final claim is postmarked between 91 days and 24 months after the close of the local unit of government's fiscal year, the director shall make a reimbursement or final adjustment payment equal to 90% of the amount the unit is otherwise entitled to.

(d) In any case, a preliminary or final claim for a de minimus cost shall not be allowed. A final claim postmarked more than 24 months after the close of the fiscal year shall not be allowed.

(e) The department may review the records or request an audit to be performed by the auditor general to verify the actual amount of the necessary cost of a state requirement. The director shall cause to be paid a disbursement for only the necessary cost and shall adjust the payment to correct for any underpayment or overpayment which occurred in the previous state fiscal year.

(f) The provisions of subdivisions (a) and (b) of this section may be waived by a 2/3 majority vote of the members elected and serving in both houses of the legislature, if the legislature determines that an emergency exists necessitating that a state requirement become effective before the provisions of subdivisions (a) and (b) allow. The declaration of an emergency shall be established in each state requirement.

(g) The department shall pay all claims within 45 days after receiving the claim from a local unit of government. The department shall pay all claims pursuant to section 10(4) within 30 days.

(3) If the director prorates claims pursuant to section 5(4), the director immediately shall report this action in writing to the governor and the legislature.

(4) The director shall adjust prorated claims if supplementary funds are appropriated for that purpose.

(5) The state treasurer, upon certification by the director, immediately shall pay all required disbursements directly to the treasurer of the appropriate local unit of government.

**21.239 Separate accounting for funds; purpose. [M.S.A. 5.3194(609)]**

Sec. 9. Funds received by a local unit of government under this act shall be separately accounted for to reflect the specific state requirement for which the funds are appropriated.

**21.240 Local government claims review board; creation; duties; appointment, qualifications, and terms of members; majority vote required to approve claim; concurrent resolution approving payment; adoption of procedures; limitations on appeal; powers of board; report. [M.S.A. 5.3194(610)]**

Sec. 10. (1) The local government claims review board is created in the department and shall advise the director on the administration of this act and perform other duties as required by this section.

(2) The board shall consist of 9 members appointed by the governor with the advice and consent of the senate. Each member shall be appointed to serve for a 3-year term, except that of the members first appointed, 3 shall be appointed for a

term of 3 years, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 1 year.

(3) Not less than 4 members shall be representatives of a local unit of government.

(4) Subject to subsection (6), the board shall hear and decide upon disputed claims or upon an appeal by a local unit of government alleging that the local unit of government has not received the proper disbursement from funds appropriated for that purpose. The board shall not consider or approve a claim for a de minimus cost. A vote of a majority of the board members appointed to and serving on the board shall be required to approve a claim submitted to the board. If a claim is approved by the board, a concurrent resolution approving payment shall be adopted by both houses of the legislature before the claim is paid.

(5) The board shall adopt procedures for receiving claims under this section and for providing a hearing on a claim if a hearing is requested by an affected local unit of government. The procedures shall provide for the presentation of evidence by the claimant, the department, and any other affected state agency.

(6) An appeal submitted under this section for a disbursement for a state-required cost shall be limited to the following:

(a) An appeal alleging that the director has incorrectly reduced payments to a local unit of government pursuant to section 5(4).

(b) An appeal alleging that the director has incorrectly or improperly reduced the amount of a disbursement when a claim was submitted pursuant to section 8(2).

(c) An appeal alleging that the local unit of government has not received a proper disbursement of funds appropriated to satisfy the state financed proportion of the necessary costs of an existing activity or service required of a local unit of government by existing law, pursuant to section 12.

(7) In determining the merits of an appeal made pursuant to subsection 6(a), (b), or (c), the board, after reviewing the evidence presented, may increase or reduce the amount requested by the claimant or may allow or disallow the claim.

(8) Before January 31 of each year, the board shall report to the legislature and the governor on the number and amount of the claims the board has approved or rejected on appeal pursuant to this section.

**21.241 Information; collection and tabulation; scope; report to legislature; concurrent resolution; updating report. [M.S.A. 5.3194(611)]**

Sec. 11. (1) Within 6 months after the effective date of this act the department shall collect and tabulate relative information as to the following:

(a) The state financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law.

(b) The nature and scope of each state requirement which shall require a disbursement under section 5.

(c) The nature and scope of each action imposing a potential cost on a local unit of government which is not a state requirement and does not require a disbursement under this act.

(2) The information shall include:

(a) The identity or type of local unit and local unit agency or official to whom the state requirement or required existing activity or service is directed.

(b) The determination of whether or not an identifiable local direct cost is necessitated by state requirement or the required existing activity or service.

(c) The amount of state financial participation, meeting the identifiable local direct cost.

(d) The state agency charged with supervising the state requirement or the required existing activity or service.

(e) A brief description of the purpose of the state requirement or the required existing activity or service, and a citation of its origin in statute, rule, or court order.

(3) The resulting information shall be published in a report submitted to the legislature not later than January 31, 1980. A concurrent resolution shall be adopted by both houses of the legislature certifying the state financed proportion of the necessary cost of an existing activity or service required of local units of government by existing law. This report shall be annually updated by adding new state requirements which require disbursements under section 5 and each action imposing a cost on a local unit of government which does not require a disbursement under this act.

**21.242 State law causing reduction in state financed proportion of necessary costs. [M.S.A. 5.3194(612)]**

Sec. 12. A state law shall not be enacted, which causes a reduction in the state financed proportion of the necessary costs of an existing activity or service required of local units of government by existing law, unless the existing law requiring an activity or service is repealed.

**21.243 State laws providing for other forms of state aid, cost-sharing agreements, or methods of making disbursements; §21.234(5)(i) inapplicable to police, fire, or emergency medical transport services. [M.S.A. 5.3194(613)]**

Sec. 13. This act does not prohibit the legislature from enacting state laws to provide for other forms of state aid, cost-sharing agreements, or specific methods of making disbursements to a local unit of government for a cost incurred pursuant to state laws enacted to which this act applies.

Although not required by article IX, section 29 of the state constitution of 1963, the provisions of section 4(5)(i) shall not apply to any standards, requirements or guidelines which require increased necessary costs for activities and services directly related to police, fire, or emergency medical transport services.

**21.244 Rules; purpose. [M.S.A. 5.3194(614)]**

Sec. 14. The department may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to regulate the disbursement of funds appropriated to local units of government, to provide guidelines for identification of funds over which the director has disbursement authority, and to implement and administer this act.

This act is ordered to take immediate effect.

Approved August 3, 1979.

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**[No. 102]**

AN ACT to make appropriations for certain state agencies and certain other state purposes for the fiscal year ending September 30, 1979; to provide for the expenditure of those appropriations; to repeal certain acts and parts of acts, to provide for certain reductions of appropriations and to provide reports.

*It is not always realized that local governments are as regulated by state and federal directives as businesses and other private institutions. While government oversight of businesses is encompassed by the notion of regulation, the regulation of localities is subsumed under the heading of "the mandate issue." Local governments are at the end of a funnel of requirements imposed by both their respective states and the federal government, and this article explores the definitional and descriptive spadework that must be done before more serious work can proceed in the study of mandates. The first inventory of federal mandates is provided, along with inventories of a sample of five states. The inventories are based on a typology developed for the study of mandates. The findings provide an empirical setting for the increased concern over the number of mandates and the trend for greater federal involvement in directing the affairs of local governments.*

# *FEDERAL AND STATE MANDATING A First Look at the Mandate Terrain*

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**Local governments** in the United States are at the receiving end of requirements or "mandates" imposed by their respective states and the federal government. As the scope and substance of state and federal mandates have increased, local expressions

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of frustration have also mushroomed. These sentiments involve several issues:

(1) worries about the impact of state and federal mandates on the capacity of local governments to participate effectively as partners in the intergovernmental system;
(2) fears that requirements imposed on localities undermine the accountability of local officials to local populations;
(3) concern that federal and state mandates are inflexible and insufficiently tailored to reflect local circumstances; and
(4) anxiety regarding the decreasing portions of the local jurisdiction's resources that can be characterized as "discretionary," since greater proportions of local resources must be allocated to satisfy mandated procedures and programs.

One could continue the litany; yet, despite the increasing attention being given the mandate issue,[1] there has been a paucity of empirical work regarding the general impact of mandates on local policymaking and little systematic effort to demarcate the scale and scope of mandating activity.[2] One major contribution to work in this field, however, is that of the Advisory Commission on Intergovernmental Relations (ACIR). It is important to understand how the ACIR work dovetails with and complements this report. Concerning the empirical components of both efforts, the ACIR study focused on 77 state mandates, which were identified by surveying governors, legislative research bureaus, community affairs departments, state municipal leagues, county associations, state boards of education, state commissioners of education, and state school board associations. The approach here was to rely on a detailed examinaton of published sources of mandates, as well as extended personal interviews with local officials in a small set of local governments.

So, while the ACIR study achieved a greater generality on a national scale, the focus of this report has the virtue of revealing the vastness and variety of the mandate terrain, something which is underplayed in the ACIR work. Additionally, the ACIR work specifically *excluded* federal mandates, all of what are here termed condition-of-aid and expenditure constraint mandates. While this study might be criticized for

overestimating the scale of mandating, the opposite is possible in the ACIR work. Also, while the ACIR (1978c: 16) work did develop its own mandate typology, unlike the typology used here, the ACIR typology *was not* applied in order to assess the relative occurrence and trends concerning these types. The ACIR work focused on the attitudes of officials toward a subset of mandates (N = 77), which were identified by the officials themselves. The typology developed here, in contrast, was applied with the purpose of getting some idea of the frequency and structure of mandating as it tends to be understood by those who express concern over mandating.

It is easy to pinpoint particular requirements that localities consider burdensome or onerous, but are these requirements indicative of a larger problem? The purpose of recent research described here was to begin framing an answer to this question by providing, within some unavoidable constraints, an educated glimpse at the mandate landscape confronted by local governments. The research was designed to do the definitional and typological spadework necessary so that questions regarding the impact of federal and state mandates on local policymaking can begin to be addressed.

The key definitional issues are listed here and a mandate typology is presented, along with descriptions of an initial inventory of federal mandates and inventories of state mandate in five states. The inventories provide the first comprehensive examination of the quantity, nature, and scope of the combined state and federal mandates that affect local governments.

## DEFINITIONS AND A TYPOLOGY OF MANDATES

In doing research on mandates, the definition of a mandate is crucial and controversial. It is crucial because the numbers and kinds of mandates that are to be identified depend on the definition. The controversy regarding the mandate definition revolves around four questions: (1) what governmental entities should be included as mandating entities (legislative, administrative, executive, judicial); (2) whether required procedures as well as required programs should be considered mandates;

(3) whether requirements that are imposed as conditions of aid should be included in the concept of mandates; and (4) whether constraints on revenues should be considered mandates. Generally, local officials who are on the receiving end of imposed requirements tend to define mandates broadly, while federal and state officials (the latter when they are doing the mandating on localities) tend to have a narrower conception of what constitutes a mandate.[3]

The research described here was based on the idea that any research involving the mandate issue should entail a definition of the term "mandate" that captures the net of meaning employed by all the major parties involved in the mandate issue. Consequently, for purposes of inventory construction we chose to define a mandate in the broadest terms, including both direct orders and conditions of aid and constraints on revenues, as well as programmatic and procedural requirements. As a basic definition, a mandate was defined as

> any responsibility, procedure, obligation, action, or anything else that is imposed by constitutional, legislative, administrative, executive, or judicial action as a *direct order* or that is required as a *condition of aid.*

*Direct order* mandates issue from those governmental sources that are sanctioned with authority to impose requirements on other governments, while *conditions of aid* are requirements that are contingent upon receiving assistance.

A typology of different mandate types was constructed (see Figure 1), and each mandate in the inventories was categorized according to the typology. For purposes of analysis, a narrower or broader mandate definition could be used by confining analysis to selected types. According to the typology, mandates are first classified into two major categories: (1) requirements and (2) constraints.

## REQUIREMENT MANDATES

Within the first category there are two principal types of mandates: programmatic and procedural. Programmatic mandates usually result from orders or conditions involving state-

TYPES OF FEDERAL AND STATE MANDATES

I. REQUIREMENTS

A. Programmatic

1. Program

2. Program Quality

3. Program Quantity

B. Procedural

1. Reporting

2. Performance

3. Fiscal

4. Personnel

5. Planning/Evaluation

6. Record-Keeping

7. Residual

II. CONSTRAINTS

A. Revenue Base

B. Revenue Rate

C. Expenditure Limits

METHOD OF IMPOSITION

I. DIRECT ORDER

II. CONDITION OF AID

APPLICATION PARAMETERS

I. VERTICAL

II. HORIZONTAL

**Figure 1: Mandate Typology**

ments of *what* should be done (the programmatic dimension); procedural mandates result from orders or conditions that involve statements of *how* it should be done (the procedural dimension). Within each of these types there are several subtypes. A necessarily brief discussion of each of the mandate types is given below.

In addition to the types of mandates discussed above, any mandate can be classified by whether or not it is designed to be applied *horizontally* or *vertically*. Vertically applied mandates are those that are directed at only one function, department, or program. Horizontally applied mandates are those that cut across various departments, programs, or functions. The requirement that the county health department provide low-income mothers and infants with a nutrition education program is an example of a vertical mandate. The requirement that all offices in a jurisdiction be made accessible to the handicapped is an example of a horizontal mandate.

The horizontal-vertical distinction is important for two reasons:

(1) In recent years, there has been a noticeable increase in horizontal mandates, those that are not merely program or department specific but cross-cut the various traditional functions.
(2) The increasing numbers of horizontally applied requirements have changed the nature of traditional service production, incorporating subsidiary requirements into government operations and imposing significant costs on both mandatory and nonmandatory programs.[4]

**Programmatic Mandates**

The typology specifies three types of programmatic mandates. The first are *program* mandates. They impose an action, responsibility, goal, service, or function, but do not specify either output quantity or quality; for examples, all general-purpose local governments must adopt a general plan (a direct-order, program mandate), or all jurisdictions receiving Community Development Block Grant Funds must have a housing assistance plan (a condition-of-aid, program mandate).

The second programmatic mandate type is program *quality* mandate. These mandates specify the conditions and characteristics of each unit of good or service that is delivered, when these units of goods are the end products or objectives of some public service effort. Program quality mandates can also specify the conditions and characteristics of those entities or people to which the goods and services are delivered. They can be attached to a given unit of service, or they might specify the conditions or entities to which the goods and services are directed. Requiring meals provided in a school lunch program to contain food elements from given food sources is an example of program quality mandate attached to a unit of a good or serive. Requirements that citizens receiving inoculations under an immunization program be free of some set of diseases *for a specified period of time* is another example of a program quality mandate.

The third kind of programmatic mandate is a program *quantity* mandate, which specifies or implies *the number of times* a given unit or a good or service is produced, or how many recipients or objects there are for some good or service. For example, a program quantity mandate might specify that there must be a certain number of toilets per mile of day-use beaches, or that all expectant mothers with incomes of less than X dollars must be provided with information regarding prenatal care. The former example involves the specification of the number of times a good or service is to be produced, while the latter example implies the number of times the good or service is produced via the eligibility requirement.

**Procedural Mandates**

Procedural mandates are requirements of goods and services or any other activity as *inputs* into the production of public service outputs, whether these are mandated or whether they are otherwise routine local activities (for example, activities that are not required, but, if they are carried out, must be done in a particular way, as when a locality decides to install a streetlight and must do so according to state specifications). It is important to think of procedural mandates as "inputs,"

since the kind of activities, goods, and services that might be mandated as a procedure are often similar to those involved in programmatic mandates. Procedural mandates are often seen as *inputs* to programmatic mandates. Several types of procedural mandates are identified: reporting, performance, fiscal, personnel, planning/evaluation, and record keeping.

*Reporting* mandates require the transportation, dissemination, or communication of any kind of data or information from the jurisdiction at which the mandate is directed to some other jurisdiction, person, agency, or department, regardless of what level of government is involved. Audit *reports* (although not the audits themselves), evaluation *reports* (although not the evaluations themselves), or public *notices* of government proceedings (although not the proceedings themselves) are examples of reporting requirements.

*Fiscal* mandates specify the manner in which the fiscal resources attached to particular programs or grants must be organized, accounted for, or monitored. These mandates also refer to specifications as to how such fiscal resources are to be spent. These mandates should not be confused with a later mandate type termed *constraints.* Fiscal mandates might involve requirements to conduct audits, adopt federal accounting procedures, restrict equipment purchases, or omit administrative overhead.

*Personnel* mandates specify how individuals employed in programs or in administering other mandates must be recruited, what their qualifications should be, and what the fringe benefits are. Requirements calling for a professional career planner to be retained in a program to rehabilitate drug addicts or for hiring practices to be in accord with afirmative action guidelines are examples of personnel mandates.

In the case of *planning mandates,* activities in a program must be coordinated with some overall plan, either that of the agency or the jurisdiction or that of some other designated jurisdiction or entity, as, for example, when a local health care program must be cleared with the regional health systems agency or when a county's air polution-control program must be made consistent with the activity of a jurisdiction encompassing the entire air basin.

*Evaluation mandates* require the administering entity to review or assess the degree to which it is accomplishing program, program quality, or program quantity goals. It might also involve the assessment of compliance with or effectiveness of other procedural mandates. A comparison of children in schools who are receiving lunches under school lunch programs and students who are not covered under such programs is an example of an evaluation activity that might be mandated.

*Record-keeping* mandates are any requirements that oblige the *retention* of information or data. Examples include requirements such as keeping records of the numbers and names of participants in a program or the retention of patient treatment histories.

*Performance* mandates form a residual category among the procedural mandates. Performance mandates refer to requirements that are imposed on any other procedural mandate because they are believed or assumed by those issuing them to contribute to the attainment of some program quality or quantity goal, even when such goals are not specified. Performance mandates can be directed toward other procedural mandates as well, when, for example, the procedures for notifying the public are specified (note that the requirement to notify the public is a *reporting* mandate, while the procedures specified for such a notification—such as notice of public hearings to be published in local newspapers—are *performance* mandates).

### CONSTRAINT MANDATES

These requirements limit the amount and kind of *locally derived* resources that can be extracted and/or employed to support public services. There are those who claim that revenue and expenditure constraints should not be regarded as mandates. In one of the only existing empirical studies of mandates, it is stated: "State mandates should be, but often are not, distinguished from state restraints" (ACIR, 1978c: 39). Among the state restraints excluded from ACIR work are the kinds of tax, revenue, and expenditure constraints included

here. The decision to include revenue and expenditure constraints within the term "mandates" was based on two considerations. First, it was practically difficult to argue that revenue and expenditure constraints do not operate in ways similar to substantive mandates that impose positive obligations on localities. Second, and perhaps even more important, is that revenue and expenditure constraints are included by many local officials in their perceptions of what constitutes the mandate issue since limits on expenditure of locally derived revenues constrains local policy discretion in a manner similar to that of other mandates.

There are three kinds of constraints of interest here: (1) revenue base mandates, (2) revenue rate mandates, and (3) expenditure limit mandates.

*Revenue base mandates* limit the *kinds* of fiscal resources that can be drawn upon to finance public services. Examples include capital investment requirements limiting the financing of such improvements to certain kinds of public bond issues or requirements that certain kinds of property be excluded entirely or in part from the tax base of the locality.

*Revenue rate mandates* refer to the proportion of any particular kind of revenue base that can be employed, often expressed as the percentage of the total value of some base. When the total value of a base cannot be determined, the limit might be expressed as a constraining percentage of the total budget. Examples of such mandated limits are prohibitions against property tax increases when prescribed tax levels are reached and limits on allowable bonded indebtedness.

*Expenditure limit mandates* constrain how or what proportion of *locally generated* resources might be spent, in total or for various functions or programs. Requirements that the budget must be balanced or that certain expenditure commitments must be made to be retirement of the local debt, limits on the use of general funds for capital improvements, or limits on how much can be spent on adoption services per family are examples of expenditure limits.

## THE MANDATE INVENTORY

### METHOD OF DEVELOPMENT

A major purpose of the research was to develop some idea of the mandate terrain, that is, the range and scope of combined federal and state mandates. Based on the broad definition and the typology categories, inventories of federal and state mandates (in selected states) were prepared. The federal mandate inventory included all federal mandates directed at *general-purpose* local governments. The state inventories, developed for California, Washington, New Jersey, Wisconsin, and North Carolina, concentrated on state mandates directed at *general-purpose* local governments.

Three criteria were used in selecting the five states for the state inventory. First, in order to obtain geographic and sectional variety, one state from each of the following five regions was included: Northeast (New Jersey), Southeast (North Carolina), Midwest (Wisconsin), Northwest (Washington), and Southwest (California). Second, since the objective was to gather a large cross-section of mandate types, states were selected that ranked above average on the ACIR ranking of state mandating frequency (ACIR, 1978c). Third, states were selected that contained jurisdictions willing to cooperate in the research and to invest staff time in gathering and interpreting data. The National Association of County Organizations and the National League of Cities assisted in developing contacts within selected localities and in obtaining the cooperation of local officials.

The following cities and counties served as the research sites for the study:

| | |
|---|---|
| New Jersey: | Somerset County (population 202,000) |
| | City of Trenton (population 104,786) |
| North Carolina: | Guilford County (population 299,000) |
| | City of Winston-Salem (population 133,683) |

| | |
|---|---|
| Wisconsin: | Dane County (population 302,000)<br>City of Milwaukee (population 669,022) |
| Washington: | Thurston County (population 93,000)<br>City of Olympia (population 23,296) |
| California: | Orange County (population 1,700,000)<br>City of San Bernardino (population 102,303) |

Field associates from these locations were familiarized with the mandate typology and given responsibility for developing mandate inventories in their respective states by surveying documentary sources and interviewing state and local officials.[5]

In assessing the scope of the inventories, several limitations must be noted. Since time did not allow for the development of an inventory of all potential jurisdictions subject to federal and state mandates, the project focused on cities and counties. Consequently, important areas of mandate activity were excluded. For example, since special districts were excluded, most education mandates were not included in the inventory. Only where cities and counties were substantially involved in education were mandates regarding education included.

It was further decided to concentrate on legislative and administrative mandates, as well as on any executive order that might apply. Court mandates were excluded, however, for two reasons. First, many court decisions are enforced, at some point, by administrative regulations or are based on legislation. Second, the burden of locating statutory and administrative mandates for the federal government and the five states selected was enormous, which meant that the additional work of searching judicial mandates was too much for the project's resources.

Because states differ in the manner in which the sources of mandates are stored and codified and in their accessibility, another practical limitation of the inventories is posed. In North Carolina, for example, administrative regulations are not codified at all; New Jersey administrative regulations are stored in massively cumbersome volumes, which made it virtually impossible for the the New Jersey field associates to survey these sources during the research period. In both North

Carolina and New Jersey, therefore, field researchers were required to rely on detailed and extensive interviews with state and local officials in order to identify administrative mandates. It should be emphasized, however, that even though administrative mandates were more readily identifiable in codified sources in California, Washington, and Wisconsin, detailed interviews with officials were also used in all the jurisdictions to identify mandates that might have been overlooked by the search through codified or documentary sources.[6]

The federal inventory was prepared by a search of the 175 volumes of the 1978 Federal Code of Regulations, with additions to the inventory resulting from interviews with local and state officials. Any requirement—whether direct order or condition of aid—was summarized and entered on a "mandate inventory sheet." This sheet also included information regarding the origin of the mandate, the date of the latest amendment to the mandate, the implementing agency or department, whether the mandate was a direct order or condition of aid, and whether it applied to both cities and counties or only one of the two. The state mandates were similarly recorded.[7]

In addition to these factors, other constraints limited the size and scope of the mandate inventories. Some mandates were, no doubt, overlooked. Others were collapsed and combined for practical reasons, so that some series of regulations were translated as a single mandate, as when pages of specific building safety regulations and inspection requirements were encountered. In other words, if anything, the following data underestimate the number of individual requirements to which a locality is normally subjected. However, the authors are confident that most major program areas were not overlooked. Without minimizing the need to overcome some of the problems that have hampered the development of the inventories, it should be emphasized that the research goal was not to provide an estimate of the actual number of mandates that exist. Instead, our aim was to provide, as comprehensively as possible, some indication of the substantive range and scope of mandates, with some notions about the relative occurrence of different mandate types.

## THE MANDATE TERRAIN: A FIRST GLIMPSE

Each mandate was characterized according to a number of variables: whether it is federal or state; what category it falls into (according to the mandate typology); whether it is applied vertically or horizontally; whether it originates from statute, executive order, or administrative regulation; and whether it is imposed as a direct order or condition of aid. In addition to the snapshot of the mandate terrain, several interrelationships among mandate characteristics were examined.

### Do Federal and State Mandates Differ?

To begin, it was of interest to ascertain whether federal and state mandates differed in their distribution among the mandate types and in terms of the other variables used to characterize mandates. According to the data reported in Table 1, there are several major differences between federal and state mandates.

A greater proportion of federal mandates are of the horizontal type, while greater proportions of state mandates are vertical. Federal mandates are, in other words, more likely than state mandates to be directed toward more than one department, program, or function, or even toward the jurisdiction as a whole. This suggests that broader policy and social goals are contained in federal mandates, for example, citizen participation, equal opportunity, equal protection, and worker safety.

Table 1 also suggests striking differences regarding the origins of federal and state mandates. Federal mandates are overwhelmingly derived from administrative regulations, while state mandates are far more likely to derive from statutes. Of the federal mandates, 96% are administrative regulations, while 80% of the state mandates originate statutorily. Neither the state nor the federal mandates indicate much in the way of executive orders as mandate origins. An obvious question regarding these differences is whether the federal and state mandate origin patterns are strictly an artifact of the inventory method. Recall that in New Jersey and North Carolina the field researchers were able to incorporate only a few administrative-

**TABLE 1**
**Distribution of Federal and State Mandates, by Type, Vertical/Horizontal, Origin, Direct Orders/Conditions of Aid, and Function**

| | Federal | | State | |
|---|---|---|---|---|
| TYPE | Percent | Number | Percent | Number |
| Program | 9.9 | 125 | 5.4 | 183 |
| Program Quality | 5.6 | 71 | 4.0 | 137 |
| Program Quantity | 1.0 | 12 | 1.1 | 36 |
| Procedural | | | | |
| Reporting | 12.5 | 158 | 15.8 | 539 |
| Performance | 36.7 | 463 | 38.7 | 1322 |
| Fiscal | 12.5 | 157 | 11.6 | 397 |
| Personnel | 9.5 | 120 | 8.6 | 297 |
| Planning & Evaluation | 6.1 | 77 | 2.6 | 90 |
| Record Keeping | 4.5 | 57 | 3.5 | 118 |
| Constraints | | | | |
| Base | 0.3 | 1 | 3.0 | 101 |
| Rate | 0.1 | 1 | 4.0 | 138 |
| Expenditure Caps | 1.0 | 13 | 1.5 | 52 |
| TOTAL | 100.0 | 1260 | 100.0 | 3415 |
| VERTICAL/HORIZONTAL | | | | |
| Vertical | 76.3 | 961 | 91.2 | 3114 |
| Horizontal | 23.7 | 299 | 8.8 | 300 |
| TOTAL | 100.0 | 1260 | 100.0 | 3414 |
| DIRECT ORDER, CONDITION OF AID | | | | |
| Direct Orders | 18.0 | 223 | 95.7 | 3268 |
| Conditions of Air | 82.0 | 1036 | 4.3 | 147 |
| TOTAL | 100.0 | 1259 | 100.0 | 3415 |
| FUNCTION | | | | |
| Agriculture | .1 | 1 | 2.7 | 92 |
| Community Development | 28.2 | 355 | 10.9 | 373 |
| Community Services | 3.6 | 45 | 1.2 | 42 |

*(continued)*

TABLE 1 (Continued)

| | Federal | | State | |
|---|---|---|---|---|
| TYPE | Percent | Number | Percent | Number |
| Education | 6.3 | 80 | 4.8 | 165 |
| Environment | 7.9 | 100 | 5.8 | 198 |
| General Government | 16.2 | 204 | 34.4 | 1176 |
| Health | 26.2 | 330 | 12.3 | 419 |
| Public Assistance | 1.4 | 18 | 3.1 | 107 |
| Public Protection | 2.6 | 33 | 11.2 | 383 |
| Recreation/Culture | 0.6 | 17 | 1.8 | 60 |
| Transportation | 3.0 | 38 | 4.6 | 157 |
| General Regulation | 3.9 | 13 | 7.1 | 243 |
| TOTAL | 100.0 | 1260 | 100.0 | 3415 |

ly derived mandates. Moreover, the federal mandates were derived almost entirely by examining the Code of Federal Regulations, not the U.S. statutes.

Table 2 suggests, however, that the differences between the origins of the state and federal mandates are probably not an artifact of the inventory method. Note the results for California, Washington, and Wisconsin. Extensive field work incorporating both the statutory and administrative origins of state mandates was conducted in each of these states. The proportion of statutorily (law) derived mandates is above 70% in each of the three cases; in the case of Washington and Wisconsin, the proportions reach nearly 80%. The data for New Jersey and North Carolina indicate very few administratively derived mandates, probably because of the inability to access directly a codified compendium of state administrative regulations.

Another dramatic difference between the federal and state mandates, according to Table 1, is that 82.0% of the federal mandates are conditions of aid, while 95.7% of the state mandates are direct orders. This finding illustrates the conventional wisdom that the federal government relies on its assistance and aid programs to influence the actions of localities, while states rely directly on their legal supremacy over their subdivisions. It further suggests that when one talks about mandates as conditions of aid, they are very often federal mandates, while direct orders are often state mandates.

**TABLE 2**
**State Mandates, by Individual States and Type, Vertical/Horizontal, Origin, Direct Order/Conditions of Aid, and Function**

| | California (N=1479) | New Jersey (N=534) | No. Carolina (N=259) | Washington (N=487) | Wisconsin (N=654) |
|---|---|---|---|---|---|
| Mandate Type | % | % | % | % | % |
| Programmatic | 10.9 | 3.3 | 23.2 | 9.3 | 10.8 |
| Program | 3.9 | 2.2 | 19.7 | 6.2 | 4.9 |
| Program Quality | 5.3 | 1.1 | 2.7 | 2.9 | 4.7 |
| Program Quantity | 1.7 | 0.0 | .8 | .2 | 1.2 |
| Procedural | 86.0 | 83.6 | 59.8 | 73.4 | 81.6 |
| Reporting | 22.4 | 2.2 | 14.7 | 10.7 | 16.3 |
| Performance | 42.9 | 46.6 | 22.4 | 27.7 | 37.6 |
| Fiscal | 9.4 | 13.9 | 10.0 | 13.6 | 14.1 |
| Personnel | 4.9 | 18.7 | 8.9 | 12.7 | 5.8 |
| Planning & Evaluation | 2.2 | 1.1 | 1.5 | 6.4 | 2.4 |
| Record Keeping | 4.2 | 1.1 | 2.3 | 2.3 | 5.4 |
| Revenue Constraint | | | | | |
| Base | 3.1 | 12.7 | 17.0 | 17.3 | 7.7 |
| Rate | 1.2 | 4.5 | .8 | 7.0 | 3.6 |
| Expenditure Caps. | .5 | 2.2 | 1.5 | 2.9 | 2.1 |
| TOTAL | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Vertical/Horizontal | | | | | |
| Vertical | 94.0 | 91.8 | 98.8 | 91.4 | 81.3 |
| Horizontal | 6.0 | 8.2 | 1.2 | 8.6 | 18.7 |
| TOTAL | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Origin | | | | | |
| Law | 72.6 | 98.4 | 99.2 | 79.3 | 79.2 |
| Executive Order | -- | -- | -- | -- | 0.6 |
| Administrative Regulation | 27.4 | 1.6 | 0.8 | 20.7 | 20.2 |
| TOTAL | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

*(continued)*

TABLE 2 (Continued)

| Mandate Type | California (N=1479) | New Jersey (N=534) | No. Carolina (N=259) | Washington (N=487) | Wisconsin (N=654) |
|---|---|---|---|---|---|
| | % | % | % | % | % |
| Direct Orders and Conditions of Aid | | | | | |
| Conditions of Aid | 1.7 | 1.3 | 3.9 | 16.0 | 3.4 |
| Direct Orders | 98.3 | 98.7 | 96.1 | 84.0 | 96.6 |
| TOTAL | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Function | | | | | |
| Agriculture | 5.0 | 0.6 | 1.9 | 1.0 | 0.8 |
| Community Development | 6.2 | 21.0 | 11.6 | 19.9 | 6.6 |
| Community Service | 0.5 | 1.1 | 4.2 | -- | 2.6 |
| Education | 8.7 | 0.6 | 0.4 | -- | 4.9 |
| Environment | 6.2 | 2.4 | 2.3 | 9.0 | 6.6 |
| General Government | 31.0 | 42.5 | 39.8 | 37.2 | 31.5 |
| Health | 18.7 | 4.1 | 15.8 | 11.3 | 3.7 |
| Public Assistance | 4.6 | 1.1 | 8.9 | -- | 1.5 |
| Public Protection | 11.3 | 10.1 | 9.3 | 11.7 | 12.4 |
| Recreation/Culture | .9 | 2.6 | 0.4 | 2.3 | 2.9 |
| Transportation | 5.1 | 0.7 | 3.9 | 1.2 | 9.5 |
| General Regulation | 1.8 | 13.1 | 1.5 | 6.4 | 17.1 |
| Other | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |

Nevertheless, all federal mandates are not conditions of aid. Over 200 are direct orders.

### Do the States Differ in Mandating Activity?

Table 2 summarizes some of the patterns among the states in their mandating activity. Naturally, the size of the state sample and the undercounting of mandates in New Jersey and North Carolina do not allow for generalizations. However, even these tentative patterns indicate some issues that might form the basis for further work. First of all, the data indicate the possibility of considerable variation among the states in the

amount of mandating that is done. Next, in all five states, the highest proportions of mandates are in the procedural categories. There seem to be few important differences in the distribution of mandates among the mandate typology categories. Moreover, there appear to be few differences among the states with regard to other mandate characteristics such as the origin of the mandate, whether it is a condition of aid or direct order, or whether it is a horizontal or vertical mandate. Finally, there seems to be a similar constancy among the functional categories of the mandates, with the general government category containing the highest proportions of mandates in each of the five states. From the data in Table 1, it appears that the federal mandates are somewhat more likely to be in the community development and health categories, while state mandates are far more likely to be focused on governmental performance, a traditional state responsibility. Does this support the previously expressed notion that federal mandates are more often directed at the achievement of social goals, while state mandates focus more closely on government administration?

**Do Mandates Differ by Point of Origin, Type, and Function?**

The mandate typology allows the examination of whether mandate types tend to share other characteristics or whether they differ according to mandate type.

Table 3 indicates whether mandates tend to differ by type, depending on if they originate as statutes or as administrative regulations, or if they are conditions of aid or direct orders. Revenue constraint mandates were excluded, since some of the characteristics disscussed did not apply to them. According to these results, mandate types do not vary in terms of their origin. Remember that mandates issued as administrative regulations are somewhat undercounted here. If it was demonstrated that mandates originating as administrative regulations differed according to mandate type, then these findings might have been further biased. In any case, it appears that the full range of mandate types, as defined by the mandate typology, is reasonably represented even while state administrative regula-

TABLE 3

Federal and State Mandate Types, by Origin of Mandates and by Conditions of Aid and Direct Orders (percentages)*

| | COA** | | DO** | |
|---|---|---|---|---|
| | Law | Admin. Reg. | Law | Admin. Reg. |
| Mandate Types | (N=69) % | (N=1096) % | (N=2695) % | (N=743) % |
| Programmatic | | | | |
| Program | 21.7 | 9.1 | 5.0 | 6.3 |
| Program Quality | 10.1 | 4.8 | 1.3 | 14.8 |
| Program Quantity | 0.0 | 1.1 | 0.9 | 1.5 |
| Procedural | | | | |
| Reporting | 7.2 | 12.6 | 15.7 | 16.4 |
| Performance | 27.5 | 36.8 | 39.7 | 37.1 |
| Fiscal | 10.1 | 13.8 | 12.6 | 6.7 |
| Personnel | 5.8 | 8.9 | 9.1 | 7.3 |
| Planning/Eval. | 4.3 | 6.9 | 2.1 | 3.5 |
| Record Keeping | 1.4 | 3.9 | 3.5 | 4.7 |

*Constraint mandates not included, although percentages are based on total mandates in the "origin" categories. Notes that columns will not, therefore, total 100%.

**Hereafter COA refers to conditions of aid and DO refers to direct orders.

tions might have been disproportionately excluded. Finally, the data indicate that procedural mandates are the most frequent, regardless of origin or whether the mandate is a condition of aid or a direct order. The variations in executive orders are not considered substantively important because of their very small number.

Table 4 reports whether or not the method of mandate application (as a vertical or horizontal mandate) appears related to the mandate type. The data suggest little relationship. While there seems to be some slight evidence that horizontal conditions of aid are more likely to be program mandates, the rest of the table suggests remarkable stability in the distribution of mandates among the mandate typology categories. Clearly the method of imposition, as a direct order or condition of aid, has little bearing on the kind of action being mandated on localities, at least among the mandates studied here.

**TABLE 4**
**Federal and State Mandates, by Type, Conditions of Aid and Direct Orders, Vertical and Horizontal***

| MANDATE TYPES | COA | | DO | |
|---|---|---|---|---|
| | Vertical (N=926) % | Horizontal (N=246) % | Vertical (N=3129) % | Horizontal (N=349) % |
| Programmatic | | | | |
| Program | 5.5 | 26.4 | 5.1 | 6.9 |
| Program Quality | 5.9 | 2.0 | 3.9 | 7.4 |
| Program Quantity | 1.3 | 0.0 | 1.1 | 0.3 |
| Procedural | | | | |
| Reporting | 13.5 | 7.7 | 16.2 | 12.0 |
| Performance | 36.9 | 33.7 | 39.6 | 33.0 |
| Fiscal | 16.5 | 2.0 | 11.0 | 14.3 |
| Personnel | 6.3 | 18.3 | 7.9 | 18.1 |
| Planning/Eval. | 7.2 | 5.3 | 2.4 | 2.9 |
| Record Keeping | 3.9 | 4.1 | 3.6 | 4.9 |

*Constraint mandates not included, although percentages are based on total mandates in the vertical/horizontal categories. Notes percentages do not total 100%.

Table 5 examines the relationship between general mandate type and function. According to Table 5, mandate types also seem relatively constant across functional categories, whether programmatic, procedural, or constraint mandates are considered, althought there are some exceptions. In the cases of community services, health, and public assistance functions, there seem to be disproportionate numbers of programmatic, direct-order mandates. Also, the general government function tends to have greater proportion in the constraint, condition-of-aid mandate type. However, for all the functions, except community service, the mandates tend to fall disproportionately into the procedural, direct-order category. In the main, whether or not a mandate is imposed on a particular function seems to be unrelated to whether or not it is a programmatic, procedural, or constraint mandate. The distribution of mandate types among the functional areas does not seem to be affected by whether or not it is a condition of aid or direct order.

TABLE 5

**Federal and State Mandates, by General Mandate Type Categories, Functional Categories, Conditions of Aid, and Direct Orders***

| | Programmatic | | Procedural | | Constraints | | |
|---|---|---|---|---|---|---|---|
| Functional Category | COA % | DO % | COA % | DO % | COA % | DO % | |
| Agriculture | 1.1 | 9.7 | 3.3 | 84.9 | 0.0 | 2.2 | N= 93 |
| Comm. Develop. | 6.2 | 4.7 | 39.7 | 46.0 | 1.0 | 2.4 | N= 723 |
| Comm. Serv. | 5.7 | 16.1 | 48.3 | 25.3 | 3.4 | 2.3 | N= 87 |
| Education | 5.3 | 8.2 | 27.4 | 51.6 | 0.8 | 2.4 | N= 244 |
| Environment | 5.6 | 7.8 | 21.8 | 61.4 | 0.3 | 1.7 | N= 293 |
| Gen. Government | 2.5 | 1.5 | 11.6 | 68.6 | 14.7 | 0.9 | N=1376 |
| Health | 6.0 | 14.8 | 32.4 | 46.2 | 0.5 | 1.0 | N= 749 |
| Public Assist. | 6.4 | 18.4 | 21.2 | 51.6 | 0.0 | 2.4 | N= 125 |
| Public Protection | 2.2 | 10.1 | 6.3 | 80.0 | 0.0 | 1.4 | N= 415 |
| Rec./Cult. | 3.2 | 9.5 | 15.9 | 65.1 | 1.6 | 7.9 | N= 63 |
| Transp. | 2.1 | 13.6 | 15.0 | 63.2 | 1.0 | 5.7 | N= 193 |
| Gen. Regs. | 1.7 | 13.5 | 5.2 | 79.0 | 0.0 | 0.6 | N= 288 |

*Difference between this total and those in other tables is due to the exclusion of mandates with missing information.

**What of the Pace in Mandating?**

Many claim that the mandate issue is more pressing today because of the expansion of federal and state concerns that spilled forth during the 1960s and the early 1970s. Policy initiatives in such areas as equal opportunity, health care, worker safety, environmental protection, and citizen participation mushroomed and, it is claimed, made their way into the administrative apparatus, appearing in the shape of mandates.

The mandate inventory provides data to allow for some examination of these longitudinal patterns. Each of the mandates included here was characterized in terms of a "source date." For statutes, the source date was the date of the statute or the date on which the law became effective. For administrative regulations, however, the source date was the date on which the enabling legislation under which the regulation was formed was amended, which is the case for all of the federal mandate inventory. Although there is no exact date for the origination of mandated laws and regulations, the inventory

TABLE 6
Number of Federal and State Mandates by Estimated Year of Imposition, by Direct Orders and Conditions of Aid

| | Federal | | State | |
|---|---|---|---|---|
| | COA | DO | COA | DO |
| Years | | | | |
| 1941-1945 | 0 | 0 | 1 | 77 |
| 1946-1950 | 0 | 8 | 0 | 276 |
| 1951-1955 | 2 | 0 | 0 | 99 |
| 1956-1960 | 2 | 2 | 1 | 79 |
| 1961-1965 | 24 | 5 | 2 | 250 |
| 1966-1970 | 92 | 43 | 38 | 365 |
| 1971-1975 | 559 | 109 | 53 | 1040 |
| 1976-1978 | 354 | 57 | 30 | 625 |

allows for a determination of when activity regarding mandates was high, whether it involved the passage of new laws or amendments of extant ones.

Table 6 summarizes the mandating activity of the federal government and the states included in this study between 1941 and 1978. The results appear to support the conventional wisdom rather strongly. Regarding federal mandates, it is not until the 1961-1965 time period that the takeoff in numbers occurs. The data are somewhat striking in the apparent precipitousness with which the federal activity seemed to occur, as well as in the ever-increasing rate at which the mandate activity appears to grow. Regarding state mandates, the conditions of aid seem to follow the federal pattern, increasing dramatically after the 1961-1965 period. The date suggest the interesting hypothesis that increased federal mandating activity stimulated, at least in part, the higher level of state mandating.

Finally, the data show that the states have always been active in mandating direct orders, although the post-1961 period seems especially intense. It appears that prior to 1966 there was

**TABLE 7**
**Number of Federal Mandates, by Type in Each Estimated Year of Imposition**

| Mandate Type / Estimated Year of Imposition | 1941-1945 | 1946-1950 | 1951-1955 | 1956-1960 | 1961-1965 | 1966-1970 | 1971-1975 | 1976-1978 | Total 1941-1978 |
|---|---|---|---|---|---|---|---|---|---|
| PROGRAMMATIC: | | | | | | | | | |
| Program | 0 | 0 | 0 | 0 | 6 | 24 | 57 | 37 | 124 |
| Program Quality | 0 | 0 | 0 | 0 | 2 | 17 | 34 | 17 | 70 |
| Program Quantity | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 10 | 12 |
| PROCEDURAL: | | | | | | | | | |
| Reporting | 0 | 6 | 0 | 0 | 7 | 10 | 81 | 54 | 158 |
| Performance | 4 | 3 | 1 | 1 | 7 | 40 | 273 | 134 | 463 |
| Fiscal | 1 | 0 | 0 | 3 | 3 | 21 | 82 | 55 | 165 |
| Personnel | 3 | 0 | 1 | 0 | 4 | 9 | 64 | 39 | 120 |
| Planning/Evaluation | 4 | 0 | 0 | 0 | 1 | 7 | 38 | 27 | 77 |
| Record Keeping | 1 | 0 | 0 | 0 | 1 | 7 | 33 | 15 | 57 |
| REVENUE CONSTRAINT: | | | | | | | | | |
| Base Constraint | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 4 |
| Rate Constraint | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| Expenditure Caps | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 11 | 2 |
| ALL VERTICAL | 13 | 9 | 2 | 4 | 22 | 114 | 473 | 330 | 954 |
| ALL HORIZONTAL | 0 | 0 | 0 | 0 | 9 | 22 | 187 | 83 | 301 |

negligible state activity in conditions-of-aid mandating, but after 1966 the number of condition-of-aid mandates steadily increased. The data illustrate the rather dramatic increase in federal activity in both direct-order and condition-of-aid mandating, and, in the case of the states, the data suggest an increased use of condition-of-aid mandates.

Table 7 depicts federal mandates by type and whether they are vertical or horizontal in order to gauge if differences occurred over time regarding the frequencies of different kinds of mandates. According to these data, it appears that all types of federal mandates are increasing in roughly similar proportions. Of the less than twenty mandates in the inventory traceable to the pre-1961 period, none were horizontal. Since 1961, however, the number of horizontal mandates has grown rapidly, highlighting the empirical basis for concern over these

## TABLE 8

## Federal and State Mandates, by Conditions of Aid, Direct Orders, and Applicability

| JURISDICTION | Federal | | | | State | | | |
|---|---|---|---|---|---|---|---|---|
| | COA | | DO | | COA | | DO | |
| Cities | App N % | Non App N % | App N % | Non App N % | App N % | Non App N % | App N % | Non App N % |
| Milwaukee, WI | 498(48.2)* | 536(51.8) | 115(53.5) | 100(46.5) | 20(100.0) | 0( 0.0) | 574(90.8) | 58( 9.2) |
| Winston-Salem, NC | 527(51.0) | 507(49.0) | 173(80.5) | 42(19.5) | 10(100.0) | 0( 0.0) | 223(89.6) | 26(10.4) |
| Olympia, WA | 254(24.6) | 780(75.4) | 93(43.3) | 122(56.7) | 63( 81.8) | 14(18.2) | 340(83.3) | 68(16.7) |
| Trenton, NJ | 562(54.4) | 472(45.6) | 32(14.9) | 183(85.1) | 7(100.0) | 0( 0.0) | 499(95.2) | 25( 4.8) |
| San Bernardino, CA | 601(58.1) | 433(41.9) | 133(61.9) | 82(38.1) | 7( 29.2) | 17(70.8) | 528(36.4) | 923(63.6) |
| Counties | | | | | | | | |
| Dane Co., WI | 565(54.6) | 469(45.4) | 126(58.6) | 89(41.4) | 15( 75.0) | 5(25.0) | 491(77.7) | 141(22.3) |
| Guilford Co., NC | 455(44.0) | 579(56.0) | 133(61.9) | 82(38.1) | 10(100.0) | 0( 0.0) | 174(69.9) | 75(30.1) |
| Thurston Co., WA | 217(21.0) | 817(79.0) | 55(25.6) | 160(74.4) | 66( 85.7) | 11(14.3) | 337(82.6) | 71(17.4) |
| Somerset, Co., NJ | 414(40.0) | 620(60.0) | 26(12.1) | 189(87.9) | 7(100.0) | 0( 0.0) | 515(98.3) | 9( 1.7) |
| Orange Co., CA | 647(62.6) | 387(37.4) | 88(40.9) | 127(59.1) | 18( 75.9) | 6(75.0) | 1151(79.3) | 300(20.7) |

*Numbers in parentheses are based on total conditions of aid and direct orders for each jurisdiction for federal and state mandates, respectively.

"cross-cutting" mandates. Horizontal mandates, because they are not program specific, have complicated the ability to ascertain the costs of mandates, since they introduce the cost of achieving broader social goals into the narrower program-specific activity of a program or department. A public works department, for example, is no longer responsible only for building or maintaining capital improvements. It is responsible as well for giving minority contractors bidding opportunities, ensuring that certain improvements provide access for the handicapped, providing individuals displaced by public projects with adequate relocation assistance, assessing the environmental impact of projects, demonstrating affirmative action in the hiring of previously disadvantaged individuals, and meeting occupational safety requirements. The emergence of significant numbers of horizontal mandates now means that the costs of meeting a broad spectrum of state or nationally defined social goals will have to be included in the costs of any public works project or the projects of other departments administering other programs.

The data in Table 7 further underscore the preeminence of procedural mandates, especially performance mandates. The bulk of the growth in procedural mandates is in the performance category, suggesting that a large portion of the increasing federal mandating activity derives from a desire or felt necessity to control in more detailed ways the administering of local *programs* and *services.*

These date provide some empirical support for those who believe that the mandate issue is substantially a product of the greater involvement of the federal government in the administration of local programs, not simply through programmatic mandates, but through specification of the details of administration. Similarly, support is revealed for the hypothesized tendency of federal requirements to be woven into the warp and woof of local service delivery through their "crosscutting" horizontal application.

**Are Localities as Susceptible as the Number of Mandates Suggests?**

Table 8 contains a breakdown of federal and state mandates by jurisdiction and according to whether or not the mandates

are applicable in that jurisdiction. The data indicate what everyone should know: The number of mandates issued is not an exact indication of how vulnerable a jurisdiction is to mandates. The data do show, however, that a minimum of 1000 mandates is imposed on each jurisdiction. Even if conditions of aid are totally excluded, each jurisdiction is the object of at least 500 mandates. Moreover, the data indicate that counties are *not* necessarily more or less likely to be susceptible to mandates than are cities. Except for California, the percentages of state mandates applicable in a jurisdiction are higher than the federal percentages. Nevertheless, particularly in the case of federal mandates, there is a chance that considerably fewer than the total number of issued mandates or requirements actually apply in individual jurisdictions. Many jurisdictions are not receiving particular grants and therefore the conditions of aid might not be applicable.

## CONCLUSIONS

Data have been presented that describe the broad outline of the mandate picture. The intention was not to provide in-depth analysis among the various mandate types and categories, since work is still proceeding in that area, but, rather, to introduce interested readers to the scale and scope of mandating.

The findings provide an empirical base for the argument that the mandate issue is indeed significant. The sheer number of mandates affecting local governments and the creation of new mandates confirm this conclusion. Regardless of whether both direct orders and conditions of aid or only direct orders, unattached to aid, are considered mandates, the numbers of mandates are multiplying. Direct-order federal mandates, a relatively new phenomenon, have increased fourfold since 1966 and continue to proliferate each year. Horizontal, crosscutting mandates that weave across traditional local government functions and superimpose new activities on them are growing along with vertical mandates. State direct-order mandates have also increased fourfold in the same period.

Among other major "counting" conclusions are: (1) While federal and state mandates do not markedly differ according to functional categories or classes in the mandate typology, they differ in terms of mandate origins, methods of imposing the

mandate, and whether the mandates tend to be vertical or horizontal; (2) states do not markedly differ in terms of a host of mandate characteristics, although they may differ considerably in the number of mandates issued; (3) the characteristics of mandates tend to vary little, if at all, by mandate type or according to functional category; and (4) the number of mandates, particularly federal mandates, if looked at by overall numbers, overstates the degree to which localities are actually vulnerable to the imposition of requirements, *although each jurisdiction is subject to a minimum of 1000 federal and state mandates and, if only direct orders are considered, to a minimum of 500.*

The important questions now to be pursued about mandates focus on the fiscal and political-institutional impacts resulting from the pervasiveness and growth of the mandate phenomenon. For example, to what extent is mandating actually reducing the autonomy of local governments and the states? What are the effects of mandating on political accountability? Who should bear the costs of mandates? What are the economic and political costs? It is hoped that the typology of the different kinds of mandates presented here will help to bring order and structure to mandate discussions and that the inventories based on it have sufficiently delineated the scope and substance of mandate practices to document the importance of mandating as an issue.

## NOTES

1. For a comprehensive review of "the mandate issue," see Lovell et al. (1979), Adrian and Griffith (1976: 5-64), Cuciti (1979), and Teaford (1973).

2. An exception is the groundbreaking ACIR (1978c) effort; the ACIR study was directed by Joseph Zimmerman and Richard Gabler.

3. See Neiman and Lovell (1979) for a more extended discussion of this issue.

4. See Kneisel and Lovell (1979) for use of the horizontal-vertical distinction for empirical purposes.

5. The field associates who prepared the inventories in the states outside of California were: New Jersey—Nancy G. Beer, Margaret G. Huchet, and Barbara L. Lawrence of the Woodrow Wilson School, Princeton University; North Carolina—James Clotfelter and Michael Williams, Department of Political Science, University of North Carolina, Greensboro; Washington—Stan Finkelstein, Association of Wash-

ington Cities; Wisconsin—Edward V. Schten and Leonard Sorrin, University of Wisconsin.

6. See Neiman and Lovell (1979) for an elaboration of some of the methodological issues in developing the mandate inventory.

7. Copies of the mandate sheets are available from the authors upon request.

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